

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 35174 of 2014 (V)

PETITIONER(S):

**NIZAR NOORUDEEN, AGED 43 YEARS
S/O.NOORUDEEN KUTTY, 'DARUNOOR', ALINGKADAVU P.O.
KARUNAGAPALLY, KOLLAM DISTRICT-690573.**

BY ADV. SMT.S.KARTHIKA

RESPONDENT(S):

- 1. ORIENTAL BANK OF COMMERCE
CALICUT BRANCH, 1ST FLOOR, AL-BAB SQUARE
COURT ROAD JUNCTION, CHEROOTTY ROAD, CALICUT-673001
REPRESENTED BY THE SENIOR MANAGER.**
- 2. AUTHORIZED OFFICER
ORIENTAL BANK OF COMMERCE, CALICUT-BRANCH, 1ST FLOOR
AL-BAB SQUARE, COURT ROAD JUNCTION, CHEROOTTY ROAD
CALICUT-673001.**

R BY ADV. SRI.SAJI P.JOSEPH, SC, ORIENTAL BANK OF COMMERCE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 35174 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY FO THE CERTIFICATE TO INCORPORATION DATED
24.07.2009.**

EXHIBIT-P2: TRUE COPY OF SEARCH REPORT DATED 08.05.2013.

EXHIBIT-P3: TRUE COPY OF THE SANCTION LETTER DATED 29.03.2012.

EXHIBIT-P4: TRUE COPY OF POSSESSION NOTICE DATED 26.09.2014.

EXHIBIT-P5: TRUE COPY OF PUBLIC NOTICE DATED 27.11.2014 FOR E AUCTION.

**EXHIBIT-P6: TRUE COPY OF REPRESENTATION DATED 17.12.2014 SUBMITTED
BY THE PETITIONER.**

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.35174 OF 2014 (V)

Dated this the 8th day of January, 2015

J U D G M E N T

The petitioner in the writ petition is one of the Directors of M/s.N & N Medical and Health Services Pvt. Ltd., a company that had borrowed amounts through a term loan availed from the 1st respondent bank. In the writ petition, the petitioner is aggrieved by the recovery steps initiated by the respondent bank, against his property, which had been offered as collateral security for the loan availed by the company. The principal ground of challenge against the recovery action initiated by the respondent was that the petitioner had not been served with the requisite notice in terms of Section 13 (2) of the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act'.

2. I have heard Smt.S.Karthika, the learned counsel appearing for the petitioner as also Sri.Shaji P. Joseph, the learned Standing counsel appearing for the respondents. Counsel for the respondent

bank would submit that insofar as the bank was not successful in proceeding with the auction sale of the property that was attached, it is now contemplating initiation of fresh proceedings for recovery of the amounts from the borrower company, as also its directors including the petitioner. On a query from the Bench, it is clarified that the steps that the 1st respondent bank proposes to take includes the issuance of a fresh notice under Section 13(2) of the SARFAESI Act to the borrower as well as the guarantor. In that view of the matter, I feel that the present writ petition can be closed by quashing Exts.P4 and P5 notices issued by the 2nd respondent and leaving it open to the 1st respondent to proceed against the borrower company, as well as its directors ,including the petitioner in this writ petition, in accordance with the provisions of the SARFAESI Act.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp