IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 35510 of 2014 (K)

PETITIONER(S):

NASARUDEEN ABDUL RAHUMAN, AGED 41 YEARS
FATHIMA MANZIL, PAZHAKULAM P.O., ADOOR.

BY ADVS.SMT.ASHA ELIZABETH MATHEW
SRI.NIRMAL V NAIR

RESPONDENT(S):
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1. HDFC LTD.
REPRESENTED BY ITS AUTHORIZED OFFICER, SIVAKUMAR.S
DY. MANAGER-LEGAL, HDFC LTD, HDFC HOUSE
P.B.NO.2288, VAZHUTHAKAD, THIRUVANANTHAPURAM. 695 001

2. THE BRANCH MANAGER
HDFC BANK LTD, PATHANAMTHTTA BRANCH. 698 002

R1&2 BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)
R1&2 BY ADV. SMT.S.AMBILY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 35510 of 2014 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE PROPERTY TAX RECEIPT DATED 19/12/2014 EVIDENCING PAYMENT OF TAX FOR 8.50 ARES OF PROPERTY IN RESURVEY NO.185/1 OF BLOCK NO.34 OF PALLIKKAL VILLAGE IN ADOOR THALUK.

EXT.P2. TRUE COPY OF THE NOTICE DATED 9/12/2014 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT

EXT.P3. TRUE COPY OF THE NOTICE DATED NIL ISSUED BY THE ADVOCATE COMMISSIONER

EXT.P4. TRUE COPY OF THE ORDER DATED 12/12/2014 PASSED BY THE CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.35510 OF 2014

Dated this the 5th day of January, 2015

J U D G M E N T

The petitioner, who had availed of a loan from the respondent bank, defaulted in repayment of the same. Consequently, the respondent bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', to recover the loan amounts. A notice dated 7.5.2014 was issued to the petitioner, which was published on 22.8.2014 in terms of Section 13 (2) of the SARFAESI Act. Ext.P4 is the order passed by the Chief Judicial Magistrate, Alappuzha appointing an Advocate Commissioner to take possession of the immovable property that was offered as security to the respondent bank, for the loan availed by the petitioner. In the writ petition, the petitioner impugns the steps initiated by the respondent bank for recovery of the loan amounts and also contends that Ext.P4 order of the Chief Judicial Magistrate, Alappuzha is legally unsustainable insofar as the said Magistrate did not have the territorial jurisdiction to pass Ext.P4 order.

2. I have heard Sri.K.K.Chandran Pillai, the learned senior counsel appearing on behalf of the respondents, who would fairly concede that Ext.P4 order of the Chief Judicial Magistrate, Alappuzha is one that is passed without jurisdiction insofar as the petitioner, who is the defaulter of the loan, is residing in Adoor which comes under the jurisdiction of the Chief Judicial Magistrate, Pathanamthitta. He would however point out that insofar as the required notice under Section 13(2) of the SARFAESI Act has already been issued to the petitioner, the petitioner does not have a case to resist the steps taken by the respondent Bank in terms of Section 13(4) of the SARFAESI Act.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I note that the sole prayer of the petitioner is to permit him to remit the balance amounts outstanding to the bank in easy installments. Taking into account the plea of financial hardship raised by the petitioner, I dispose the writ petition with the following directions:-

> (i) The total amount due to the respondent bank from the petitioner is stated to be Rs.5,72,756/- as on 30.12.2014. This amount represents the overdue

amount in respect of the loan installments that were due from the petitioner. This is apart from the regular installments that the petitioner has to pay on the loan availed from the respondent bank which is in an amount of Rs.50,00,000/-. Accordingly, if the petitioner remits an amount of Rs.5,72,756/- in eight equal monthly installments commencing from 2.2.2015, and continues to make payment of the regular installments as per the loan conditions, the recovery steps initiated against him by the respondent bank shall be kept in abeyance.

(ii) It is made clear that if the petitioner commits a default in respect of any of the installments, he will lose the benefit of this judgment and the respondent bank will be free to continue the recovery proceedings against him from the stage at which they presently stand.

(iii) Ext.P4 order of the Chief Judicial Magistrate, Alappuzha being one that is passed in excess of jurisdiction, is quashed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp