

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATE : 11.01.2017**

**CORAM**

**THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH**

**AND**

**THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN**

**REVIEW APPLICATION NO. 113 OF 2016**

**IN**

**W.P. NO. 35222 OF 2016**

**AND**

**W.M.P. NO.27235 OF 2016**

Hotel Amuthas

rep. By its partner Mr.V.Bahavanth

S/o S.Venkatachalam

No.3,4, K.R.G. Nagar 7<sup>th</sup> Extn. St.

Ganapathy, Coimbatore 641 001.

.. Petitioner

**- Vs -**

1. The District Collector

Coimbatore District

Coimbatore.

2. The Tahsildar

Coimbatore South, Coimbatore.

3. Indian Overseas Bank

rep. By its Chief Manager

Oppanakara Street, Coimbatore 641 002.

4. M/s.Nithyakumar & Co.

rep. By its Managing Partner

Mr. C.Rajagopal

No.155, Ponnurangam Road

R.S. Puram, Coimbatore 641 002.

.. Respondents

Review Application filed to review the order dated 12.7.16 made in W.P. No.35222 of 2015.

For Petitioner : Ms. Selvi George

For Respondents : Mr. F.B.Benjamin George for R-3

**ORDER**

**(DELIVERED BY HULUVADI G.RAMESH, J.)**

This review application has been filed by the petitioner to review the order dated 12.7.16 made in W.P. No.35222 of 2015.

2. Heard the learned counsel appearing for the petitioner and the learned counsel representing the respondent bank.

3. It is the stand of the petitioner that he had invested substantial amounts in the hotel business without knowledge of the loan borrowed by the 4<sup>th</sup> respondent. For want of repayment of the said loan, the bank had initiated proceedings under the SARFAESI Act. Order has been passed by the 1<sup>st</sup> respondent overlooking the fact that the 4<sup>th</sup> respondent had taken loan clandestinely from the bank by deposit of the title deeds, suppressing the registered agreement entered into with the petitioner. This action of the 4<sup>th</sup> respondent is bad in the eye of law, which fact has been lost sight of by the 1<sup>st</sup> respondent while passing the order.

4. It is the submission of the learned counsel for the petitioner that by virtue of the amendment to Section 17 of the SARFAESI Act, a right has accrued to the petitioner and, therefore, in such a backdrop, the petitioner prays for reviewing the order passed by this Court on 12.7.16.

5. Though such a contention is advanced, this Court is of the considered view that there is no error apparent on the face of the record warranting review of the order passed by this Court. Subsequent amendment, if any, will not take away the right accrued in favour of the purchaser/mortgagee. It is pertinent to mention here that this Court, on an earlier occasion, had given option to the petitioner to participate in the auction process for purchase of the property. However, no material has been placed before this Court to show that the petitioner partook in the auction and submitted his bid. In such a backdrop, it is informed that even after a period of four months the petitioner has not taken any steps to remove the articles of furnitures and other movable articles, which are kept inside the premises.

6. Be that as it may. Without going further into the facts once over, this Court directs that if the petitioner had not already removed the movable articles, which are inside the premises, the petitioner is given liberty to approach the 3<sup>rd</sup>

respondent bank by submitting a representation. On such representation being submitted by the petitioner, the 3<sup>rd</sup> respondent bank shall consider the request for removal of the belongings of the petitioner and after due consideration the 3<sup>rd</sup> respondent bank shall permit the petitioner to have the movable articles removed within a period of 15 days from the date of submission of the representation.

7. With the above observation and direction, this review petition is disposed of. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

**(H.G.R.J.) (M.V.M.J.)**  
**11.01.2017**

Index : Yes/No

Internet : Yes/No

GLN

To

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Coimbatore District  
Coimbatore.
2. The Tahsildar  
Coimbatore South  
Coimbatore.
3. The Chief Manager  
Indian Overseas Bank  
Oppanakara Street  
Coimbatore 641 002.

**HULUVADI G.RAMESH, J.**  
**AND**  
**M.V.MURALIDARAN, J.**

**GLN**

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