

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY ,THE 30TH DAY OF NOVEMBER 2018 / 9TH AGRAHAYANA, 1940

WP(C).No. 38459 of 2018

PETITIONER/S:

PREETHY MATHEW
AGED 43 YEARS
D/O A S MATHEW,
APPAKOTTUMURIYIL HOUSE,
THURUTHIKKAD
MALLAPPALLY,
PATHANAMTHITTA(DT) , 689 597

BY ADV. SMT.BLOSSOM MATHEW

RESPONDENT/S:

- 1 THE AUTHORISED OFFICER
UCO BANK, CYRILS TOWER, NEAR COLLECTORATE,
KOTTAYAM(DT) -686 001
- 2 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE RAJPATH MARG,-
E- BLOCK, NEW DELHI 110 011

SMT.C.G.PREETHA-CGC, SRI. DEEPAK JOY-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Even though various assertions have made by the petitioner in this writ petition and various reliefs have also been sought on such basis, I am of the view that going by the judgment of the Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tondon** ((2010) 8 SCC 110) and followed recently in **Authorised Officer, SBT v. Mathew** (ILR 2018 (1) Ker. 479), my jurisdiction in this area is completely restricted and it will not be possible for this Court to entertain this writ petition; particularly when I am told that the petitioner has already invoked his alternative remedy before the Debts Recovery Appellate Tribunal (DRAT for short) and that consequent to its dismissal, he has filed a second appeal before the Debts Recovery Tribunal (DRAT for short), Chennai.

2. However, Sri. P.C Thomas, the learned counsel appearing for the petitioner submits that the petitioner has been constrained to approach this Court because, pending the appeal before the DRAT, the bank has now issued another notice for

sale of the property and that physical possession of the property is likely to be taken by them any time now. He, therefore, contends that the action of the bank in doing so, especially when the DRAT has already issued an order directing the petitioner to remit Rs.13 Lakhs on or before 10.12.2018 as a condition for consideration of the appeal, is unfair, illegal and unconstitutional. The learned counsel says that the attempt of the bank clearly is to frustrate his appeal before the DRAT and therefore, that this Court interdict all such action by the bank, at least until such time as the DRAT concludes its proceedings.

3. Even though, I hear the learned counsel for the petitioner as afore, the fact remains that even in Ext.P12, which is the proceedings sheet produced by the petitioner relating to the appeal filed by him before the DRAT, the said Tribunal has not granted any interim order restraining the bank from continuing with their intent in taking over possession or of sale of the property. However, as has been rightly stated by Sri.P.C. Thomas, it has put the petitioner on a condition of having to pay Rs.13 Lakhs and obviously therefore, a consideration of the appeal before DRAT would happen only if the petitioner is

complies with that condition.

The axiomatic question, therefore, before me is whether it will be equitable to allow the respondent bank to continue with further processes under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act ('the SARFAESI Act' for brevity), when a matter is concededly pending before the DRAT. I am of the view that since the proceedings before the DRAT is admittedly listed on 10.12.2018, it will only be in the fairness of things and to maintain the majesty of the processes of law that the respondent bank be directed to defer further action under the SARFAESI Act until the DRAT considers the application on 10.12.2018, which will obviously be done by it, taking note of the interim order above mentioned and as to whether the petitioner has complied with the same.

4. In the afore circumstances, I order this writ petition and direct the respondent bank to not to take physical possession of the secured asset, if it has not already been taken, until 14.12.2018. I am fixing this date because I am told by the learned Standing Counsel for the bank, that the property is

scheduled to be sold on 15.12.2018.

Needless to say that if the DRAT does not issue any order interdicting the taking over of possession or of sale of the secured asset on 10.12.2018 or on any other day prior to 14.12.2018, the bank will be at liberty to take possession of the property after the closing hours of 14.12.2018 and even to sell the property as scheduled, subject to any orders that be issued by the DRAT.

This Writ Petition is thus ordered.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Dxy

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE TITLE DEED DATED 30.3.2005 BEARING NO. 670/05 REGISTERED IN MALLAPPALLY SRO
EXHIBIT P2	A TRUE COPY OF THE CERTIFICATE DATED 11.01.2018 ISSUED BY AGRICULTURAL OFFICER, IT STATES THAT LAND IN QUESTION IS AGRICULTURAL LAND
EXHIBIT P3	A TRUE COPY OF THE STATEMENT OF LOAN ACCOUNT
EXHIBIT P4	A TRUE COPY OF THE POSSESSION NOTICE DATED 11.3.2014 ISSUED BY THE BANK
EXHIBIT P5	A TRUE COPY OF THE JUDGMENT IN WPC NO. 29670/2017 DATED 25.09.2017
EXHIBIT P6	A TRUE COPY OF THE S.A. NO. 24/18 FILED BY THE PETITIONER BEFORE THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM (DRT FOR SHORT)
EXHIBIT P7	A TRUE COPY OF THE ADVOCATE COMMISSION REPORT DATED 23.1.2018 IT STATES THAT LAND IN QUESTION IS AGRICULTURAL LAND
EXHIBIT P8	A TRUE COPY OF THE INTERIM ORDER DATED 23.01.2018 PASSED IN IA NO. 112/18 BY THE DRT, DENYING THE INTERIM STAY SOUGHT
EXHIBIT P9	A TRUE COPY OF THE JUDGMENT DATED 27.2.2018 IN OP (DRT) NO. 25/2018 BY WHICH THE PETITIONER WAS DIRECTED TO SEEK ALTERNATIVE REMEDY
EXHIBIT P10	A TRUE COPY OF THE PROCEEDINGS OF THE ADDITIONAL DISTRICT MAGISTRATE, PATHANAMTHITTA WHICH STATES ABOUT THE

COMPENSATION PAID TO THE PREDECESSOR IN
INTEREST

- EXHIBIT P11 TRUE COPY OF THE APPEAL NO. 140/18
FILED BEFORE THE APPELLATE TRIBUNAL,
CHENNAI CHALLENGING THE INTERIM ORDER
OF THE DRT, DENIYING THE STAY
- EXHIBIT P12 RELEVANT PAGES OF A DIARY OF DRAT
CHENNAI, WITH REGARD TO THE PROCEEDINGS
DATED 12/11/2018 SERIAL NO. 23 IN
EXHIBIT -P- 12 IS THE CASE OF THE
PETITIONER ON 12/11/2018 THE DRAT
ALLOWED THE WAIVER APPLICATION
- EXHIBIT P13 TRUE COPY OF THE ORDER DATED 24/10/2018
PASSED BY THE JCM PATHANAMTHITTA, IN MC
NO. 214/2018 ON A REQUEST FILED U/S 14
OF THE SARFAESI ACT BY THE BANK. BY
THAT ORDER AN ADVOCATE COMMISSIONER WAS
APPOINTED TO TAKE THE POSSESSION OF THE
PROPERTY
- EXHIBIT P14 TRUE COPY OF THE E-AUCTION NOTICE DATED
13.11.2018 ISSUED BY THE BANK