

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945

OP (DRT) NO. 170 OF 2023

AGAINST THE ORDER DATED 24.03.2023 IN I.A NO.882/2023 IN

SA NO.48/2023 OF DEBT RECOVERY TRIBUNAL-1, ERNAKULAM

PETITIONERS:

- 1 M/S FERROUS TRADERS,
REP. BY ITS PROPRIETOR
MR. FAIZAL ABDUL SAMAD, S/O. ABDUL SAMAD,
AGED 63 YEARS, RESIDING AT 'SMILING HOUSE' ,
CHENDAMANGALAM. P.O, KOTTAYIL KOVILAKAOM KARA,
CHENDAMANGALAM VILLAGE, NORTH PARAVUR TALUK,
ERNAKULAM DISTRICT-683 512.
- 2 FAIZAL ABDUL SAMAD,
AGED 63 YEARS, S/O .ABDUL SANAD,
RESIDING AT 'SMILING,HOUSE',
CHENDARNANGALAM. P.O,
KOTTAYIL KOVILAKAOM, CHENDAMANGALAM VILLAGE,
NORTH PARAVUR TALUK, ERNAKULAM DISTRICT,
PIN- 683 512.

BY ADVS.

SREEKANTH S. NAIR

SANDEEP P JOHNSON (K/62/2020)

RESPONDENTS:

- 1 THE AUTHORIZED OFFICER,
UNION BANK OF INDIA, ASSET RECOVERY BRANCH,
2ND FLOOR, UNION BANK BHAVAN, M.G. ROAD,
ERNAKULAM, KERALA-682 035.
- 2 THE BRANCH MANAGER,
UNION BANK OF INDIA, NORTH PARAVUR BRANCH,
M.S. TOWERS, PARK VIEW ROAD, NORTH PARAVUR,
ERNAKULAM DISTRICT, PIN - 583 513.

- 3 MR. ABDUL HANEEF,
S/O. ALI HASSAN @ ALASAN KUTTY,
RESIDING AT ALUPARMBIL CHERASSERI HOUSE,
PADIKKAL, MOONNIYUR, MALAPPURAM DISTRICT, PIN -
676 317.
- 4 MR. AYOOB,
S/O .USMAN, RESIDING AT NAMBIPUNNILATH,
THRIPPEKKULAM , PAPPINIVATTOM, MATHILAKOM ,
KODUNGALLUR, THRISSUR DISTRICT, PIN - 680 685.
- 5 MR. MUHAMMED ASHRAF,
S/O. EANI, RESIDING AT POOTHAKKAL,
MUKATTA NILANBUR.R.S, NILAMBUR.P.O,
MALAPPURAM DISTRICT, PIN - 679 330.
- 6 MR. ABDUL LATHEEF. M.,
S/O. ABDURAHIMAN, RESIDING AT MALIYEKKAL,
KALIYATTAMUKKU, UH NAGAR, MOONNIYUR,
MOONNIYUR THIRURANGADI, MALAPPURAM, PIN - 676
311.

BY ADVS.

ASP.KURUP
S.JATHIN DAS
SREEKANTH S. NAIR
SADCHITH.P.KURUP(K/1419/2002)
C.P.ANIL RAJ(K/872/2007)
SIVA SURESH(K/2688/2022)

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR
ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of October, 2023

The petitioners obtained a loan from the Union Bank of India. As the petitioners could not repay the loan promptly, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were initiated. The petitioners approached the Debt Recovery Tribunal-1, Ernakulam, and also filed I.A for staying coercive proceedings against the petitioners. The said I.A was dismissed as per Ext.P7 order. Ext.P7 order is under challenge in this original petition.

2. It is to be noted that against any order passed by the Debt Recovery Tribunal, the petitioners have an efficacious alternate remedy by way of appeal to the Debt Recovery Appellate Tribunal. In such circumstances, the original petition may not be strictly maintainable.

3. Faced with the situation, the Counsel for the petitioners submitted that the petitioners have already approached the Debt Recovery Appellate Tribunal challenging Ext.P7. The appeal was filed on 21.04.2023. Therefore, unless there is a direction of this Court to consider their appeal, the petitioners will be put to untold hardship and loss.

4. Counsel entered appearance on behalf of respondents 3 to 6. The Counsel submitted that they have participated in an auction proceedings conducted under the Securitisation Act. The bid culminated in their favour. A Sale Certificate was issued. The property was registered in the name of respondents 3 to 6. In the circumstances, the original petition is not maintainable and it is only to be dismissed.

5. Standing Counsel entered appearance on behalf of respondents 1 and 2 and pointed out that as the petitioners have already approached the Debt Recovery Appellate Tribunal, the original petition cannot be maintainable.

Taking into consideration the afore facts and as the petitioners have already filed appeal before the Debt Recovery

O.P.(DRT) No.170 of 2023

: 5 :

Appellate Tribunal for redressal of grievance, the original petition is dismissed, without prejudice to the right of the petitioners to prosecute the appeal before the Debt Recovery Appellate Tribunal.

Sd/-

**N. NAGARESH
JUDGE**

AMR

APPENDIX OF OP (DRT) 170/2023

PETITIONERS' EXHIBITS

- Exhibit- P 1 TRUE COPY OF THE POSSESSION NOTICE
DATED 05-11-2022, ISSUED TO THE
AUTHORIZED OFFICER TO THE PETITIONER.
- Exhibit - P 2 TRUE COPY OF THE SALE NOTICE DATED
15-11-2022 ISSUED BY THE AUTHORIZED
OFFICER TO THE PETITIONER.
- Exhibit -P 3 TIME COPY OF THE STATUS OF
THE SA NO. 48 OF 2023, FILED BEFORE
THE DRT-1 , ERNAKULAM.
- Exhibit- P 4 TRUE COPY OF THE STAY PETITION NO. 882
OF 2023 IN S.A 48/2023DATED 07-03-2023,
FILED BEFORE THE DRT-I, ERNAKULAM.
- Exhibit -P 4(a) TRUE COPY OF THE PETITION NO. 883
OF 2023 IN S.A.48/2023 FOR DIRECTION
FILED BY THE PETITIONER DATED
07-3-2023, BEFORE THE DRT-L AT,
ERNAKULAM.
- Exhibit - P 4(b) TRUE COPY OF THE PETITION NO. 881 OF
2023IN S.A. NO. 48/2023 TO ACCEPT ADDL.
ANNEXURE-A7 &N A7 (A) (WITHOUT
ANNEXURE), FILED BY THE PETITIONER
DATED 07-03 -2023, BEFORE THE DRT-I AT
ERNAKULAM.
- Exhibit- P 5 TRUE COPY OF THE COUNTER AFFIDAVIT
FILED BY THE RESPONDENT AGAINST THE
STAY PETITION NO.882/2023 IN S.A.
NO. 48/2023 DATED 14/3/2023 OF THE
DRT-1, ERNAKULAM.
- Exhibit- P 6 TRUE COPY OF THE VALUATION REPORT DATED
16/3/2023 VALUED BY AN APPROVED VALUER,
IN RESPECT OF THE PROPERTY ILLEGALLY
SOLD OUT BY THE AUTHORIZED OFFICER.

- Exhibit - P7 THE TRUE COPY OF THE ORDER DATED
24-03-2023, IN I.A. 882/2023 IN S.A.
48/2023 OF THE DRT-I, ERNAKULAM.
- Exhibit P8 TRUE COPY OF THE STATUS OF THE APPEAL
BEFORE THE DRAT ,AT CHENNAI, IN DAIRY
NO. 454/2023 DATED 21/4/2023
- Exhibit P9 TRUE COPY OF LEASE AGREEMENT ENTERED
BY 2ND PETITIONER WITH SHAMEENA MUNSER.
- Exhibit P10 TRUE COPY OF PETITION RCP NO. 10/2021
FILED BY 2ND PETITIONER BEFORE THE
HON'BLE RENT CONTROL COURT.
- Exhibit P11 TRUE COPY OF ORDER DATED 16.05.2023 IN
MC NO. 974/2022 FILED BY 1ST
RESPONDENT.

RESPONDENTS' EXHIBITS

- EXHIBIT R1 A A TRUE COPY OF SALE CERTIFICATE DATED
6/3/23 IN THE NAME OF RESPONDENT 3
TO 6.
- EXHIBIT R1 B A TRUE COPY OF REGISTERED SALE
CERTIFICATE IN THE NAME OF RESPONDENTS
3 TO 6.