

Tom Thomas Vs. the Authorised Officer

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Court : Kerala

Decided On : Oct-10-2014

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Tom Thomas

Respondent : The Authorised Officer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE FRIDAY, THE 10TH DAY OF OCTOBER 2014 18TH ASWINA, 1936 WP(C).NO. 25321 OF 2014(M) ----- PETITIONER(S): ----- TOM THOMAS, AGED 57 YEARS, S/O.K.J.THOMAS, RESIDING AT VAYALUNKALAYA KULATHUNKAL HOUSE, VAZHOOR EAST P.O., KOTTAYAM. BY ADV. SRI.K.SHAJ.

RESPONDENT(S): ----- 1. THE AUTHORISED OFFICER/CHIEF MANAGER, STATE BANK OF TRAVANCORE , REGION II, KOTTAYAM.

2. THE BRANCH MANAGER, STATE BANK OF TRAVANCORE, MAMMOOD BRANCH, PB NO.1, MAMOOTIL BUILDING, CHANGANACHERRY, KOTTAYAM. BY ADV. SRI.K.S.DILIP,SC. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-10-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rs. WP(C).NO. 25321 OF 2014(M) APPENDIX PETITIONER'S

EXHIBITS:- EXHIBIT P1 COPY OF THE NOTICE DATED1102/2012 ,UNDER SECTION132) OF THE SARFAESI ACT,2002 ISSUED BY THE BANK. EXHIBIT P2 COPY OF THE POSSESSION NOTICE DATED0612/2012 ISSUED BY THE BANK UNDER SECTION134)OF THE SARFAESI ACT2002 EXHIBIT P3(A) COPY OF THE RECEIPT DATED0406/2012 SHOWING PAYMENTS MADE BY THE RESPONDENT. EXHIBIT P3(B) COPY OF THE RECEIPT DATED3006/2012 SHOWING PAYMENTS MADE BY THE RESPONDENT. EXHIBIT P3(C) COPY OF THE RECEIPT DATED2108/2012 SHOWING PAYMENTS MADE BY THE RESPONDENT. EXHIBIT P3(D) COPY OF THE RECEIPT DATED2112/2012 SHOWING PAYMENTS MADE BY THE RESPONDENT. EXHIBIT P(E) COPY OF THE RECEIPT DATED1912/2012 SHOWING PAYMENTS MADE BY THE RESPONDENT. EXHIBIT P4 COPY OF THE NOTICE DATED1103/2013 UNDER RULE81) OF THE SECURITY INTEREST ENFORCEMENT RULES. EXHIBIT P5 COPY OF THE A NOTICE DATED0212/2013 BY THE RESPONDENT BANK ISSUED UNDER RULE86) OF THE SECURITY INTEREST ENFORCEMENT RULES. EXHIBIT P6 COPY OF THE

ORDER

DATED0701/2014 OF THE DEBT RECOVERY TRIBUNAL, ERNAKULAM IN IA. NO.3640/2013. EXHIBIT P7 COPY OF THE

ORDER

IN CMP NO.1095/2014 FILED BEFORE THE CHIEF JUDICIAL MAGISTRATE, KOTTAYAM. RESPONDENT'S EXHIBITS:- NIL. //TRUE COPY// P.A. TO JUDGE rs. A.M.SHAFIQUE, J.

----- W.P.(C)No.25321 OF2014- -----
----- Dated this the 10th day of October, 2014

JUDGMENT

Petitioner has approached this Court challenging the proceedings taken by the respondent bank under SARFAESI Act, 2002. It is now submitted by both the parties that the property has already been taken possession by the respondent bank. Learned counsel for the petitioner only seeks time to repay the entire amount and in the meantime request is made for restoring possession to the

petitioner. Learned counsel for the petitioner also submits that he is intending to withdraw the S.A.47/13 filed before the Debt Recovery Tribunal, Ernakulam.

2. Learned counsel for the respondent bank submits that the petitioner and the debtor has availed of several opportunities to pay the amount as per directions issued by the Debt Recovery Tribunal. They had not paid any amount, as a result of which, possession was taken by the respondent Bank. It is submitted that the liability will come to about 140 lakhs and therefore, there is no question of restoring possession to the petitioner. Learned counsel also submits W.P.(C)No.25321 OF2014:

2. : that the petitioner is not entitled for any instalment facility on account of the fact that they did not pay any amount as directed by the Debt Recovery Tribunal. Heard learned counsel for the parties. Having regard to the submission made on behalf of the parties, I am of the view that some leniency can be shown to the petitioner so that an opportunity can be granted for repayment of the entire amount. Accordingly, writ petition is disposed of as under: The petitioner/debtor shall pay the entire amount due to the respondent bank in ten equal monthly instalments, first of which shall be paid on or before 10.11.2014. If there is default in payment of any of the instalments, it shall be open for the bank to proceed in accordance with law and if the instalments are paid in time, the bank shall not take any steps for effecting sale of the property. If the entire amount is paid as directed above, the bank shall restore possession of the property to the petitioner.
A.M.SHAFIQUE, Judge

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