
(2010) 08 KL CK 0193

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3373 of 2010

Karshaka Sanghatana Aykyavedi

APPELLANT

Vs

State Bank of Travancore

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 31(1)

Citation : (2011) 2 BC 189 : (2010) 3 KLT 719

Hon'ble Judges : J. Chelameswar, C.J.; P.N. Ravindran, J

Bench : Division Bench

Advocate : P.C. Thomas and Rojo J. Thuruthipara, for the Appellant; T. Sethumadhavan, Pushparajan Kodoth and K. Jayesh Mohan Kumar, for the Respondent

Final Decision : Allowed

Judgement

J. Chelameswar, C.J.—Heard Sri. P.C. Thomas, learned Counsel appearing for the petitioners and Sri. T. Sethumadhavan, Standing Counsel for the respondent Bank.

2. This Writ Petition is filed challenging a Circular issued by the sole respondent Bank dated 22.12.2009 (SAMD/14/2009). The relevant portion of the Circular reads as follows:

In terms of Section 31(1) of the SARFAESI Act, the provisions of the Act shall not be applicable to "agricultural land". Plantations were hitherto treated to be agricultural land and accordingly action for enforcement of such securities under the provisions of the above Act was not encouraged. However, the Kerala High Court has, in Muhammed Basheer Vs. Dy. General Manager, District Co-operative Bank Ltd., , held that considering the scope and ambit of the relevant provisions of law and also the scheme of the statute, plantations are not included in "agricultural land" referred to in Section 31(1) of the SARFAESI Act. As per this decision, the branches are advised that action for enforcement of security under

SARFAESI Act can be initiated in the case of plantations.

Branches and Controllers are therefore advised to identify NPA accounts secured by mortgage of plantations and to initiate action for enforcement of such securities immediately, in those accounts where such action had not been initiated so far, for the reason that the security is "agricultural land". Please note that these Instructions are applicable to suit filed accounts also where plantations are obtained as security.

3. Such a Circular came to be issued in the light of a reported decision of this Court in Muhammed Basheer Vs. Dy. General Manager, District Co-operative Bank Ltd., .

4. The abovementioned decision of a learned Judge of this Court came to be reversed subsequently in a reported decision in Muhammed Basheer Vs. Kannur District Co-operative Bank Ltd., . In the circumstances the impugned Circular cannot be sustained and the same is accordingly declared illegal. The Writ Petition is allowed only to the abovementioned extent.