

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

WEDNESDAY, THE 31<sup>ST</sup> DAY OF JANUARY 2024 / 11TH MAGHA, 1945

WP(C) NO. 36946 OF 2023

PETITIONER:

UNION BANK OF INDIA  
AGED 39 YEARS  
KUNNAMKULAM BRANCH GROUND FLOOR, CROSS VIEW BUILDING  
KUNNAMKULAM, THRISSUR REP.BY ITS BRANCH MANAGER JEEVAN  
O.V, PIN - 680203  
BY ADVS.  
ASP.KURUP  
SADCHITH.P.KURUP  
C.P.ANIL RAJ  
SIVA SURESH  
RESHMA RAJ

RESPONDENTS:

- 1 THE SUB REGISTRAR  
OFFICE OF SUB REGISTRAR KUNNAMKULAM, THRISSUR, PIN - 680503
- 2 THE TAHSILDAR  
TALUK OFFICE THALAPPALLY, KUNNAMKULAM THRISSUR, PIN - 680503
- 3 THE VILLAGE OFFICER  
ANJUR VILLAGE OFFICE ANJURKUNNU, ANJUR THRISSUR, PIN - 680523
- 4 MARIYA TRADING COMPANY  
3/337-2, LALLOOR, PO ELTHURUTH THRISSUR REP. BY ITS  
PROPRIETOR BABY P.T, PIN - 680611
- 5 NAZEER RANGATH VEERANKUTTY ABOO  
RANGATH HOUSE,P O THOZHIYLOOR THOZHIYLOOR, THRISSUR,  
KERALA, PIN - 680520  
G.P. - SHYNIMOL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
31.01.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**VIJU ABRAHAM , J.**

=====

**WP(C) No. 36946 of 2023**

=====

**Dated this the 31<sup>st</sup> day of January, 2024**

**J U D G M E N T**

Petitioner has approached this Court seeking a direction to the 1<sup>st</sup> respondent to efface the attachment effected over the property covered by Exts.P1, P2 and P4 as reflected in Ext.P3 encumbrance certificate and register the sale certificate issued by the petitioner Bank to the 5<sup>th</sup> respondent on presentation of the same on payment of requisite stamp duty. The petitioner has also sought for a consequential direction to respondents 2 and 3 to effect transfer of registry of property in the name of the 5<sup>th</sup> respondent as and when the sale certificate is registered by the 1<sup>st</sup> respondent.

2. Petitioner is a Bank. One Hebby C.J. had availed three financial facilities (1 business loan and 2 housing loans) from the Bank by mortgaging the property having an extent of 2.22 ares spread as 2.02 ares in Sy.No. 131/26 and 0.20 ares in Sy.No. 131/31 of Anjur Village, by mortgaging the same with the Bank on 30.06.2008. Since there was default in repayment of the said amount, proceedings were initiated under the SARFAESI Act and the property was put to sale and the 5<sup>th</sup> respondent being the successful bidder, sale certificate was issued by the Bank in the name of the 5<sup>th</sup>

respondent. Even though the property was sold by the Bank, the same was declined to be registered by the registering authority stating that there is an attachment over the same by the Munsiff's Court, Trichur in I.A. No.2/2023 in O.S. No. 696/2023 at the instance of the 4<sup>th</sup> respondent. But the petitioner would submit that the said attachment was effected on 14.06.2023 much after the execution of mortgage in favour of the petitioner Bank. Petitioner relies on the judgment in WP(C) No.23153/2011 wherein paragraphs 5 to 10 reads as follows:-

*"5. The learned Counsel for the petitioner submits that the equitable mortgage of the property was created in favour of UCO Bank in the year 2006 and the attachments/charges entered in Ext.P4 Encumbrance Certificate were effected after the date of mortgage. Relying on the decision in **Madhan S. v. Sub Registrar, Kollam and Others [2014(1) KHC 249]: 2014(1) KLT 406: ILR 2014 (1) Ker.586: 2014 (1) KLJ 483: AIR 2014 Ker.54]** and the decision of the Division Bench in **Secretary, Keechery Service Co-operative Bank Ltd. v. Sajitha Nizar alias Sajitha P.M. and Others [2020 (5) KHC 231: ILR 2020 (4) Ker.249: 2020 (6) KLT 68: 2020 (4) KLJ 970]** the Counsel contends that attachments effected subsequent to the creation of equitable mortgage have to be effaced after the property is purchased by the petitioner under the provisions of the SARFAESI Act.*

*6. The learned Counsel for the 5th respondent contended that though the attachments entered in Ext.P4 Encumbrance Certificate are subsequent to the equitable mortgage created in favour of UCO Bank, those attachments are prior to the sale conducted on 03.03.2011. The Counsel also contended that the*

*petitioner ought to have approached the Civil Court or the Debts Recovery Tribunal for redressal of his grievances.*

7. In **Madhan's** case (*supra*), the learned Single Judge, taking note of relevant statutory provisions and various judicial decisions, held in paragraph 9 as follows:

*"9. The preponderance of judicial opinion leads to the irresistible conclusion that the sale of the mortgaged property in favour of the petitioner under Ext. P5 sale certificate under the Act is free of all encumbrances. The attachments effected subsequent to the mortgage created in favour of the bank do not affect the title and ownership of the petitioner over the subject property. Such attachments have no impact on the sale conducted under the Act and the same ceases to have any effect or fall to the ground the moment the sale is confirmed in favour of the petitioner. The declaration so sought by the petitioner is therefore granted and I further direct the Sub-Registrar and the Village Officer to efface the attachments effected subsequent to the mortgage from the relevant records. Otherwise those attachments would remain as a permanent taboo prejudicial affecting the marketability and title to the property even though they ceased to have any legal efficacy. The needful in relation to the property bought by the petitioner shall be done within a period of two months from the date of receipt of a copy of this judgment."*

8. A Division Bench of this Court in **Ali Asharaf M.M. and Another v. Sub Registrar, Thrissur (Judgment dated 24.7.2015 in W.A.No.612/2015)** has affirmed the law laid down in **Madhan's** case.

9. In **Keechery Service Co-operative Bank** case (*supra*), another Division Bench of this Court also affirmed the law laid down in **Madhan's** case (*supra*) and held in paragraph 7 as under:

*"7. .... We do not find any reason to disagree with the declaration of law in **Madhan's** case (*supra*) which was virtually affirmed by the Division Bench in **Ali Asharaf's** case (*supra*). In the said circumstances and taking note of the fact that the orders of attachment of the property in question were after the creation of equitable mortgage of the same with Federal Bank we do not find any reason to interfere with the impugned judgment passed by the learned Single Judge following the dictum in **Madhan's** case*

*(supra), carrying the directions to effect mutation of the property as also to efface all encumbrance over the property effected after 27/06/2014, the date on which the property in question was mortgaged with Federal Bank.*

*10. In the light of the dictum laid down by this Court in **Madhan's** case (supra) and affirmed in **Ali Asharaf and Keechery Service Co-operative Bank** cases (supra), the attachments effected subsequent to the creation of equitable mortgage has to be effaced after the property is purchased by the petitioner under the proceedings under the SARFAESI Act.*

3. Heard the learned Government Pleader also.

4. Since attachment effected referred to in Ext.P3 encumbrance certificate is subsequent to the mortgage created in favour of the petitioner Bank, in the light of the judgment cited supra petitioner is entitled to succeed. Therefore, the above writ petition is allowed directing the 1<sup>st</sup> respondent to efface the attachment effected over the property covered by Exts.P1, P2 and P4 as reflected in Ext.P3 encumbrance certificate and register the sale certificate issued by the petitioner Bank to the 5<sup>th</sup> respondent on presentation of the same on payment of requisite stamp fee. Consequent to the registration of the sale certificate respondents 2 and 3 shall take steps to effect transfer of registry of the property in the name of the 5<sup>th</sup> respondent. The 1<sup>st</sup> respondent shall efface the attachment and register the sale certificate at the earliest at any rate within an outer limit of one month from the date of receipt of a copy of this judgment. Consequential order directing the respondents 2 and 3 to effect transfer of registry of property in the

name of the 5<sup>th</sup> respondent shall be effected within a period of one month thereafter.

With the above said direction, the writ petition is disposed of.

**Sd/-  
VIJU ABRAHAM  
JUDGE**

sbk/-

**APPENDIX OF WP(C) 36946/2023****PETITIONER EXHIBITS**

Exhibit P1	A TRUE COPY OF THE SALE DEED NO. 243/2004 OF KUNNAMKULAM SRO IN THE NAME OF THE BORROWER
Exhibit P2	A TRUE COPY OF THE MEMORANDUM OF DEPOSIT OF TITLE DEED DATED 30.6.2008 DRAWN BY THE PETITIONER BANK REGARDING THE DEPOSIT OF TITLE DOCUMENT
Exhibit P3	A TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 31.10.2023 ISSUED FROM KUNNAMKULAM SUB REGISTRY
Exhibit P4	A TRUE COPY OF THE SALE NOTICE DATED AND CONDUCTED THE SALE OF THE PROPERTY ON 29.07.2023
Exhibit P5	A TRUE COPY OF THE DEMAND NOTICE DATED 03/12/2019
Exhibit P6	A TRUE COPY OF THE DEMAND NOTICE DATED 11/02/2020
Exhibit P7	A TRUE COPY OF THE STATEMENT OF ACCOUNT NO 550805040055012 DATED 15/01/2024
Exhibit P8	A TRUE COPY OF THE STATEMENT OF ACCOUNT NO 550806650000282 DATED 15/01/2024
Exhibit P9	A TRUE COPY OF THE STATEMENT OF ACCOUNT NO 550806650000036 DATED 15/01/2024