

Kerala High Court

Aseena vs The Sub Divisional Magistrate on 17 July, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 3331 of 2007(V)

1. ASEENA, D/O.LATE M.K.IBRAHIM,
... Petitioner

Vs

1. THE SUB DIVISIONAL MAGISTRATE,
... Respondent

2. THE VIJAYA BANK, KIZHAKKENCHERY,

3. THE AUTHORISED OFFICER,

For Petitioner :SRI.SAJAN VARGHEESE K.

For Respondent :SRI.K.ANAND (A.201)

The Hon'ble MR. Justice J.B.KOSHY

The Hon'ble MR. Justice P.N.RAVINDRAN

Dated :17/07/2008

O R D E R

J.B.KOSHY & P.N.RAVINDRAN, JJ.

W.P.(C).No.3331 OF 2007

Dated 17th July, 2008

JUDGMENT

Koshy,J.

The second respondent bank and third respondent authorized officer approached the District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for assistance in taking possession of the secured assets

owned by the writ petitioner. Section 14 of the above Act reads as follows:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

The above section mandates that bank can approach only the District Magistrate or Chief Metropolitan Magistrate for assistance and the District Magistrate is not authorised to delegate the function and he cannot make over the matter to the Sub Divisional Magistrate for passing orders. A delegate without authority cannot further delegate. The District Magistrate has to take up the matter and pass orders according to law. Since Ext.P7 order was passed by the authority without jurisdiction, we set aside the same only on that question and no other grounds raised in the writ petition are considered in this judgment. The District Magistrate can pass orders in the petition filed before it. Respondents 2 and 3 can follow up the matter.

The writ petition is allowed to the above extent.

J.B.KOSHY JUDGE P.N.RAVINDRAN JUDGE tks