Sunitha S Vs. the Authorised Officer

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Court : Kerala

Decided On : Jan-31-2013

Judge : Hon'Ble the Chief Justice Mrs. Manjula Chellur

Appellant : Sunitha S

Respondent : The Authorised Officer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT:- THE HON'BLE THE CHIEF JUSTICE MRS. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN THURSDAY, THE 31ST DAY OF JANUARY 2013 11TH MAGHA 193 W.A.No.166 of 2013 -------------------------------------- AGAINST THE JUDGMENT IN W.P.(C).NO.2124/2013-M, DATED 22 01.2013. --------------- APPELLANT/ APPELLANT:- ------------------------------------ SUNITHA. S., RAJ BHAVAN, KAKKAMOOLA, KALLIYOOR (PO)., THIRUVANANTHAPURAM DISTRICT. BY ADVS.SRI.GOPAKUMAR R.THALIYAL SRI.V.ANIRUDHAN NAIR SRI.A.CHANDRA BABU RESPONDENTS/ RESPONDENTS:- -- 1. THE AUTHORISED OFFICER, THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LIMITED, HEAD OFFICE, EAST FORT, THIRUVANANTHAPURAM

023.

2. THE BRANCH MANAGER THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LIMITED, NEYYATTINKARA (M & E) BRANCH, NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT, PIN

121. R1& R2 BY STANDING COUNSEL SRI.C.K.JAYAKUMAR. THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- Manjula Chellur, C.J.

& K.Vinod Chandran, J.

--------------------------------- W.A.No.166 of 2013 --------------------------------- Dated this, the 31st day of January, 2013 JUDGMENT K.Vinod Chandran,.J.

The appellant, aggrieved by the proceedings taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) against the residential house on default of the housing loan, was before the learned Single Judge. The writ petition was filed after Exhibit P1 possession notice was issued. Even before the learned Single Judge the appellant neither disputed the liability nor the quantum, but only sought for instalment facility. That was granted by the learned Single Judge, permitting to pay the amounts due in eight equal monthly instalments. The 1st instalment was directed to be paid on or before 31.1.2013 and the subsequent instalments on or before the last working day of every succeeding month. W.A.No.166 of 2013 - 2 - 2. The appellant, however, contends before us that due to the illness of the family members and the impecunious circumstance of the family, default was committed, which was not in any manner wilful or deliberate. The appellant fervently prays that she be permitted to regularize her loan so as to facilitate payment in monthly instalments as originally sanctioned. The appellant's counsel made a fervent plea for such indulgence based on the facts and circumstances enumerated in the writ petition as also the appeal.

3. The learned counsel for the Bank raised an apprehension as to the ability of the appellant to pay up the amounts, but did not raise serious objections to the plea for regularization.

4. In the circumstances stated above, it is directed that the 2nd respondent-Bank shall issue a statement of the defaulted amount in the loan account as on today within a period of two weeks from today. The appellant shall pay the said defaulted amount in eight equal monthly instalments, W.A.No.166 of 2013 - 3 - starting from 28th of February, 2013 and every succeeding month, again on or before 28th. Needless to say that the equated monthly instalments as fixed originally shall also be paid along with the instalments to regularize the default. If two consecutive defaults are made, then the respondent-Bank shall be entitled to proceed against the property of the appellant. However, in the event of the appellant complying with the directions above and making payments as aforesaid, then the proceedings under the SARFAESI Act shall be kept in abeyance. The Writ Appeal is disposed of as above, however, with no order as to costs. Sd/- Manjula Chellur, Chief Justice Sd/- K.Vinod Chandran, vku/ Judge. - true copy -