

**Fasil.C Vs. Hdfc Ltd**

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**SooperKanoon Citation :** [sooperkanoon.com/1131011](http://sooperkanoon.com/1131011)

**Court :** Kerala

**Decided On :** Feb-04-2014

**Judge :** Honourable Mr.Justice P.R.Ramachandra Menon

**Appellant :** Fasil.C

**Respondent :** Hdfc Ltd

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON TUESDAY, THE 4TH DAY OF FEBRUARY 2014 15TH MAGHA, 1935 WP(C).No. 3403 of 2014 (A) ----- [M.C.NO. 856/2013 OF THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM] ..... PETITIONER: ----- FASIL.C, ROSE PETAL, MELETTUKONAM, PARASSALA, THIRUVANANTHAPURAM- 695 502. BY ADVS.SRI.G.P.SHINOD, SRI.RAM MOHAN.G, SRI.MANU V. RESPONDENT: ----- H.D.F.C LTD., H.D.F.C HOUSE, VAZHUTHACAUD, THIRUVANANTHAPURAM- 10, REPRESENTED BY ITS AUTHORIZED OFFICER. BY SRI.K.K.CHANDRAN PILLAI, SENIOR ADVOCATE, ADV. SRI.THOMAS JAMES MUNDACKAL, S.C. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Prv. W.P.(C).NO.3403/2014-A: APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1: A TRUE COPY OF THE M.C NO 856 OF 2013 FILED BY THE RESPONDENT BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT,

THIRUVANANTHAPURAM. EXHIBIT P2: A TRUE COPY OF THE

ORDER

DATED 09-12-2013 PASSED IN M.C NO 856 OF 2013 RESPONDENT'S EXHIBITS:  
NIL. //TRUE COPY// P.A. TO JUDGE. Prv. P.R. RAMACHANDRA MENON J.

~~~~~ W.P.(C) No. 3403 of 2014

~~~~~ Dated, this the 4th day of February, 2014

JUDGMENT

The petitioner availed a loan of Rs. 5,50,000/- from the respondent Bank, creating security interest over the property in question. Because of the adverse circumstances, the repayment could not be effected on time, as scheduled, which made the petitioner a defaulter and the Bank proceeded with the steps under the SARFAESI Act, after declaring the account as 'NPA' and sought to approach the Chief Judicial Magistrate's Court, Trichur by filing Ext. P1 petition under Section 14 of the Act, for getting vacant surrender of the premises, whereby an Advocate Commissioner also came to be appointed, as borne by Ext. P2, which made the petitioner to approach this Court by filing this writ petition.

2. The learned counsel for the petitioner submits that the default was never wilful and that earnest efforts are being taken to clear the entire overdue amount. It is stated that the petitioner shall continue to effect the payment without fail, simultaneously pointing out that, there is absolutely no dispute whatsoever with regard to the rights and liberties of the Bank. W.P.(C) No. 3403 of 2014 :

2. :

3. The learned counsel appearing for the respondent Bank submits that as on today a sum of Rs. 1.55 lakhs is due towards the defaulted installments from November, 2011 and unless and until the overdue amount is cleared, the claim for the petitioner to have the loan account regularized is not liable to be entertained. The learned counsel for the petitioner submits that the petitioner is ready and willing to clear the over due amount, if some breathing time is provided in this regard by way of reasonable installments.

4. After hearing both the sides and considering the particular facts and circumstances including the fact that the loan availed by the petitioner is in the housing sector, the petitioner is permitted to clear the 'overdue' amount by way of 'three' equal monthly installments, the first of which shall be effected on or before the last working day of February, 2014, followed by similar installments to be effected on or before the last working day of the succeeding months. Subject to this, the loan account will stand regularized and the recovery proceedings initiated against the petitioner shall be kept in abeyance. It is made clear that, if the petitioner commits any default in remitting the overdue installments as above or if two consecutive defaults are made in respect of the regular EMIs, the respondent Bank will be at liberty to proceed with W.P.(C) No. 3403 of 2014 :

3. : further steps for realization of the entire amount in lump from the stage where it stands now. The Writ Petition is disposed of. Sd/- P. R. RAMACHANDRA MENON, (JUDGE) kmd

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