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Ansar, vs the Manager,

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SooperKanoon Citation : sooperkanoon.com/1280325

Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/12924/2025

Appellant : ANSAR,

Respondent : The Manager,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947 PETITIONER: ANSAR,AGED 43 YEARS, S/O. ABDUL KHADAR, RESIDING AT THADATHIL PUTHAN VEED, KALLUMTHAZHAM, KOLLAM, PIN - 691004. BY ADVS. S.SREEKUMAR (KOLLAM) K.VIJAYAN NAMITHA RAJESH NITHYA V.D. ABHILASH T. RESHMI SASIDHARAN RESPONDENTS: 1 THE MANAGER,CATHOLIC SYRIAN BANK, KOLLAM MAIN BRANCH, NAJEEM COMPLEX, DISTRICT HOSPITAL ROAD, CHAMAKADA, KOLLAM, PIN - 691001. 2 THE AUTHORIZED OFFICER,CATHOLIC SYRIAN BANK, SOUTH KERALA ZONAL OFFICE, MALANKARA BUILDING COMPLEX,

PALAYAM, THIRUVANANTHAPURAM, PIN - 695034. BY SRI. MADHU RADHAKRISHNAN, SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner availed certain credit facilities from the respondent bank. On default being committed, proceedings have been initiated against the petitioner under the provisions of the SARFAESI Act. Physical possession of the factory building of the petitioner has already been taken.

2. The learned counsel appearing for the petitioner

submits that, if the petitioner is given some time, petitioner will be in a position to clear the liability as per the One Time Settlement offered to the petitioner. It is submitted that, the petitioner was permitted to clear the entire liability by paying a sum of Rs.2 Crores as One Time Settlement. It is submitted that, the petitioner will immediately pay a substantial amount and the Bank may be directed not to take physical possession of the residential house of the petitioner, which is presently in the occupation of tenants. It is submitted that the petitioner is also willing to pay interest for the delayed payment of the One Time Settlement amount.

3. Learned counsel appearing for the respondent Bank submits that the Bank is not willing to show any indulgence in the

facts and circumstances of the present case. It is submitted that,

the present liabilities are in excess of Rs.6 Crores and the Bank had

permitted the petitioner to clear the liability under One Time Settlement on payment of a substantially lesser amount. It is submitted that, the petitioner did not avail the benefit of One Time Settlement and the One Time Settlement offered to the petitioner has therefore, lapsed. It is submitted that, when the Advocate Commissioner attempted to take physical possession of the residential house (which is mortgaged and which is presently under the occupation of tenants), the Bank officials and the Advocate Commissioner were threatened and they were forced to return without taking physical possession. It is submitted that, going by the law laid by the Division Bench of this Court in State Bank of India v. Sham; 2024 (6) KLT 865, this Court cannot direct the modification of the terms of One Time Settlement. It is submitted that, in such circumstances, the petitioner has not made out any case for grant of any relief in the exercise of jurisdiction under Article 226 of the Constitution of India. It is submitted that, notwithstanding the above, if the petitioner were to pay a sum of Rs.50 lakhs immediately, the taking of physical possession of the secured asset can be deferred and the petitioner can be permitted to approach the Bank for any fresh One Time Settlement which shall be considered in terms of the policy of the Bank.

4. Having heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent Bank and in the light of the submissions made as above, this writ petition is disposed of, directing that if the petitioner pays a sum of Rs.50 lakh by 11.04.2025, the taking of physical possession of the residential house of the petitioner shall be deferred. If the petitioner pays the aforesaid amount by 11.04.2025, it will also be open to the petitioner to approach the Bank for fresh One Time Settlement and if such request is made by the petitioner, the same shall be considered, in accordance with the policy of the Bank. If the petitioner remits the amount of Rs.50 lakh by 11.04.2025 and also submits the request for fresh application for One Time Settlement, taking of physical possession of the residential house of the petitioner shall be deferred till a decision is taken by the competent Authority of the respondent Bank on the application for One Time

Settlement. It is made clear that, in the facts and circumstances of this case, no application for extension of time will be considered under any circumstances. The writ petition is disposed of accordingly.

Sd/- GOPINATH P. JUDGE DK APPENDIX OF WP(C) 12924/2025 PETITIONER EXHIBITS Exhibit P1 THE TRUE COPY OF THE LEASE AGREEMENT DATED 21.05.2024 Exhibit P2 THE TRUE COPY OF THE ORDER DATED 25.03.2024 IN WP(C) NO. 12084/2024 Exhibit P3 THE TRUE COPY OF THE JUDGMENT DATED 23.04.2024 IN WP(C) NO. 12084/2024 OF THIS HON'BLE COURT Exhibit P4 THE TRUE COPY OF THE APPEAL FILED BEFORE THE ASST. COMMISSIONER AND TAX PAYERS ,SERVICE CIRCLE, KOLLAM EAST Exhibit P5 THE TRUE COPY OF THE LETTER DATED 19.03.2025 ISSUED BY THE 2ND RESPONDENT Exhibit P6 THE TRUE COPY OF THE ADVOCATE COMMISSIONERS NOTICE DATED 20.03.2025

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