Sunilkumar S vs Kerala State Co-Operative Bank Ltd. (Kerala Bank)

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Court : Kerala

Decided On : Jan-31-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/767/2024

Appellant : Sunilkumar S

Respondent : Kerala State Co-Operative Bank Ltd. (Kerala Bank)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA, 1945 WP(C) NO. 767 OF 2024 PETITIONER: SUNILKUMAR S AGED 58 YEARS S/O. T.K. SREEDHARAPANICKER, RESIDING AT PUTHENPURAYIL HOUSE, PULLAD P.O., PATHANAMTHITTA DISTRICT., PIN - 689545 BY ADVS. P.HARIDAS BIJU HARIHARAN SHIJIMOL M.MATHEW P.C.SHIJIN ROSHIN MARIAM JACOB SAI KRISHNAN UNNITHAN V. RESPONDENTS:

1 KERALA STATE CO-OPERATIVE BANK LTD. (KERALA BANK) REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, HEAD OFFICE,

COBANK TOWERS, PB NO. 6515, VIKAS BHAVAN P.O., PALAYAM, THIRUVANANTHAPURAM., PIN - 695033 2 THE DEPUTY GENERAL MANAGER KERALA STATE CO-OPERATIVE BANK LTD. (KERALA BANK) CREDIT PROCESSING CENTRE, P.B. NO. 45 MYLAPRA ROAD, PATHANAMTHITTA, PIN - 689645 3 PATHANAMTHITTA DISTRICT CO-OPERATIVE BANK LTD. NO.4365 REPRESENTED BY ITS SECRETARY, HEAD OFFICE, PATHANAMTHITTA., PIN - 689645 4 THE AUTHORIZED OFFICER KERALA STATE CO-OPERATIVE BANK LTD. REGIONAL OFFICE, ALAPPUZHA DISTRICT., PIN - 688001 5 KERALA STATE CO-OPERATIVE BANK LTD PULLAD BRANCH, PATHANAMTHITTA REPRESENTED BY ITS MANAGER,, PIN - 689545 BY ADV N. RAGHURAJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

31.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of January, 2024 The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Kerala State Co-operative Bank Limited to the petitioner, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid 20 lakhs to the petitioner as

Ordinary Loan in the year 2016. The petitioner states that though the petitioner made remittances promptly during the initial repayment period of the financial advance, he could not pay the repayment installments promptly later due to Covid-19 pandemic. The repayment of loan fell into arrears. It happened due to reasons beyond the control of the petitioner.

3. Though the petitioner requested the Bank to permit

the petitioner to repay the overdue amounts in easy monthly installments, the Bank authorities were not yielding. The authorities, instead started coercive proceedings invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002 and issued Exts.P1 to P4 notices.

4. The petitioner states that he is still in a position to

clear the overdue amounts towards the loan, if sufficient time is given to clear the dues in easy monthly installments. If the respondents are permitted to continue with the coercive proceedings and auction the secured assets provided by the petitioner, he will be put to untold hardship and loss.

5. Standing Counsel entered appearance on behalf of

the Bank and denied all the statements made by the petitioner. On behalf of the respondents, it is submitted that the loan was given to the petitioner in the year 2016. The petitioner committed default in repaying the loan.

6. The Bank repeatedly reminded the petitioner and

required him to clear the dues. The petitioner deliberately omitted to do so. In the circumstances, the Bank had no other go than to proceed against the petitioner invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002. The impugned Exts.P1 to P4 notices were issued in these circumstances. The petitioner has not advanced any legal reasons to thwart the coercive proceedings initiated by the Bank.

7. The Standing Counsel, however, submitted that if

the petitioner is ready and willing to make a substantial payment soon and remit the outstanding amount immediately thereafter, a short breathing time can be granted to the petitioner to clear the dues. The Standing Counsel submitted that the outstanding amount due to the Bank from the petitioner as on 24.01.2024 is 41,78,542/-.

8. I have heard the counsel for the petitioner and the Standing Counsel representing the Bank.

9. The specific case of the petitioner is that the

petitioner has been making the repayment and maintaining the loan account initially. The default in repayment of the loan occurred lately due to reasons beyond the control of the petitioner. The petitioner has provided substantial security which will safeguard the interest of the Bank.

10. In the facts and circumstances of the case, I am inclined to dispose of the writ petition giving a short and reasonable time to the petitioner to clear off the liability.

11. The writ petition is therefore disposed of with the following directions:

(i) The petitioner shall remit 10 lakhs on

or before 06.02.2024 another 10 lakhs on or before 29.02.2024 and the balance outstanding amount in 12 consecutive and equal monthly installments immediately thereafter along with accruing interest and other Bank charges, if any.

(ii) If the petitioner commits default in making payments as directed above, the respondent will be at liberty to continue with the coercive proceedings against the petitioner in accordance with law.

(iii) If the petitioner makes payments as directed above, coercive proceedings, if any, against the petitioner shall stand deferred. Sd/- N.NAGARESH JUDGE

hmh APPENDIX OF WP(C) 767/2024 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE POSSESSION NOTICE ISSUED BY THE 3RD RESPONDENT DATED 25.10.2019 Exhibit P2 TRUE COPY OF THE NOTICE ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER DATED 20.09.2021 Exhibit P3 TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 05.11.2021 Exhibit P4 TRUE COPY OF THE SALE NOTICE ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DATED 30.12.2023 Exhibit P5 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 03.01.2024 BEFORE THE RESPONDENTS 4

AND 5