Sumesh E.G vs I D B I Bank

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Court : Kerala

Decided On : Jan-09-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/804/2024

Appellant : Sumesh E.G

Respondent : I D B I Bank

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 9TH DAY OF JANUARY 2024 / 19TH POUSHA, 1945 WP(C) NO. 804 OF 2024 PETITIONER: SUMESH E.G AGED 45 YEARS, S/O GOVINDHAN E.K , ELAVANKUNNIL HOUSE, ATTENGANAM P.O BELUR VILLAGE, VELLARIKUND TALUK KASARGOD DT., PIN - 671533. BY ADVS. M.R.REENA P.S.SUJETH RESPONDENT: IDBI BANK KANHANGAD BRANCH REP BY ITS AUTHORISED OFFICER NITHYANANDA BUILDING , MAIN ROAD KANHANGAD, KASARGOD DT PIN - 671315. BY ADV.SRI.P.PAULOCHAN ANTONY THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.01.2024, THE COURT ON

THE SAME DAY DELIVERED THE FOLLOWING: :2:

JUDGMENT

Dated this the 9th day of January, 2024 The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the IDBI Bank 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 16 lakhs as Housing Loan in the year

2017 and 5,40,000/- to the petitioner in the year 2021. 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 instalments 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 :3:

instalments, 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 Ext.P1 notice invoking Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

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 instalments. If the

respondent is 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 respondent, it is submitted that the loan was given to the petitioner in the years 2017 and 2021. The petitioner committed default in repaying the loan. :4:

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 Ext.P1 notice was 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 balance overdue 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 09.01.2024 is 19,19,521/- and the overdue amount is 1,74,265/-.

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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 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 the overdue

amount of 1,74,265/- in eight equal and consecutive monthly instalments along with accruing interest and other Bank charges, if :6: any. The first instalment shall be paid on or before 09.02.2024.

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

(iii) The petitioner shall also pay current EMIs along with the aforesaid payments.

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

ams :7: APPENDIX OF WP(C) 804/2024 PETITIONER EXHIBITS Exhibit -P1 A TRUE COPY OF THE POSSESSION NOTICE ISSUED ISSUED BY THE RESPONDENT DATED Exhibit -P2 A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED