Sivalal vs the Authorized Officer / Chief Manager (Maintenance)

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SooperKanoon Citation : sooperkanoon.com/1287868

Court : Kerala

Decided On : Jan-31-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/2881/2024

Appellant : Sivalal

Respondent : The Authorized Officer / Chief Manager (Maintenance)

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. 2881 OF 2024 PETITIONER: SIVALAL AGED 52 YEARS S/O SADASIVAN, ELAVUMMOODU HOUSE, VALIYAM P.O., KOLLAM DISTRICT, PIN - 691540 BY ADVS. K.V.ANIL KUMAR SWAPNA VIJAYAN RADHIKA S.ANIL RESPONDENT: 1 THE AUTHORIZED OFFICER / CHIEF MANAGER (MAINTENANCE) STATE BANK OF INDIA, RASMEC, KOTTARAKKARA, PIN - 691506 2 THE BRANCH MANAGER STATE BANK OF INDIA, POOYAPPALLY BRANCH, KOLLAM DISTRICT, PIN - 691537 BY ADV S.MANU 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 State Bank of India 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 30 lakhs to the petitioner as Home

Loan in the year 2014. 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 Ext.P1 notice.

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 2014. 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 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 31.01.2024 is 19,86,745/- and the overdue amount as on 31.01.2024 is 1,47,641/-

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 the overdue

amount of 1,47,641/- in 10 consecutive and equal monthly installments along with accruing interest and other Bank charges, if any. First of such installments shall be paid on or before 01.03.2024.

(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) 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 hmh APPENDIX OF WP(C) 2881/2024 PETITIONER EXHIBITS Exhibit-P1 A TRUE COPY OF THE DEMAND NOTICE DATED 29.12.2023 ISSUED BY THE 1ST RESPONDENT