

Riyas, vs the Branch Manager

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Court : Kerala

Decided On : Mar-27-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/4223/2023

Appellant : RIYAS,

Respondent : The Branch Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
WEDNESDAY, THE 27TH DAY OF MARCH 2024/7TH CHAITHRA,
1946 WP(C) NO. 4223 OF 2023 PETITIONER: RIYAS, AGED 34
YEARS, S/O. JAMALUDHEEN, THEYYAMPADI ADUKKATH P.O,
KUTTIADY, KOZHIKODE, PIN - 673508 BY ADV. SAYED MANSOOR
BAFAKHY THANGAL RESPONDENTS: 1 THE BRANCH MANAGER,
IDBI BANK LTD, KALPETTA, KALPETTA BUSINESS CENTRE,
BYPASS JUNCTION, WAYANAD, WAYANAD DISTRICT, PIN - 673121
2 AUTHORISED SALE OFFICER, IDBI BANK LTD, KALPETTA,
KALPETTA BUSINESS CENTRE, BYPASS JUNCTION, WAYANAD,
WAYANAD DISTRICT, PIN - 673121 BY ADV. R.REMA THIS WRIT

PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

JUDGMENT

Dated this the 27th day of March, 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 40 lakhs to the petitioner as KCC Loan and an amount of 5,95,119/- as FIT Loan in the

year 2017. 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 financial difficulties. The repayment of loan fell into arrears later. It happened due to reasons beyond the control of the petitioner.

:3:

3. Though the petitioner requested the Bank to permit the petitioner to repay the outstanding amounts in easy monthly 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 Exts.P1 and P2 notices.

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

clear the outstanding amounts towards the loan, if sufficient time is given to clear the dues in easy monthly instalments. 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 :4: the loans were given to the petitioner in the year 2017. 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 and P2 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 remit the balance outstanding amount in instalments, 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 11.03.2024 is 83,31,791/- .:5:

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 account 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:⁶

(i) The petitioner shall remit the outstanding amount of 83,31,791/- in 10 consecutive and equal monthly installments along with accruing interest and other Bank charges, if any. First of ⁶: such installments shall be paid on or before 29.04.2024.

(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) If the petitioner pays the amount as directed above, any coercive proceedings against the petitioner will stand deferred. Sd/- N. NAGARESH JUDGE

SR ⁷: APPENDIX OF WP(C) 4223/2023 PETITIONER'S EXHIBITS: Exhibit P1 TRUE PHOTOTSTAT COPY OF LOAN RECALL NOTICE DATED 13-07-2021 ISSUED BY THE 1ST RESPONDENT BANK Exhibit P2 TRUE PHOTOSTAT COPY OF POSSESSION NOTICE PUBLISHED BY THE RESPONDENT BANK ON 24-12-2021 IN 'MADHYAMAM' DAILY NEWSPAPER

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