Mano E B, vs Union of India,

Mano E B, vs Union of India,

SooperKanoon Citation : sooperkanoon.com/1288857

Court : Kerala

Decided On : May-31-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/5248/2023

Appellant : Mano E B,

Respondent : Union of India,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 WP(C) NO. 5248 OF 2023 PETITIONERS:

1 MANO E.B., AGED 71 YEARS, S/O EDWARD. T, PROPRIETOR, WESTON WATCH COMPANY, TC 83/2923, SREE GANESH TOWER, MG ROAD, PAZHAVANGADI, THIRUVANANTHAPURAM -695023, RESIDING AT WESTON, MUTTACAUD P O, VEGANOOR, THIRUVANANTHAPURAM, PIN - 695523 2 SARASWATHY R., AGED 69 YEARS, W/O MANO E B, RESIDING AT WESTON, MUTTACAUD P.O., VEGANOOR, THIRUVANANTHAPURAM, PIN - 695523 3 REFI

M.S., AGED 40 YEARS, S/O MANO E B, RESIDING AT WESTON, MUTTACAUD P.O., VEGANOOR, THIRUVANANTHAPURAM, PIN - 695523

BY ADV. SRI.MANO E.B.(Party-In-Person) RESPONDENTS: 1 UNION OF INDIA, REPRESENTED BY: THE SECRETARY, MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES UDYOG BHAVAN, NEW DELHI, PIN - 110011 2 THE SECRETARY, DEPARTMENT OF FINANCIAL SERVICES, MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI, PIN - 110001 :2:

3 STATE OF KERALA, REPRESENTED BY: THE PRINCIPAL SECRETARY, INDUSTRY DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 4 THE RESERVE BANK OF INDIA, REPRESENTED BY THE REGIONAL DIRECTOR, RESERVE BANK OF INDIA POST BAG NO.6507, BAKERY JUNCTION, THIRUVANANTHAPURAM, KERALA, PIN - 695033 5 THE SOUTH INDIAN BANK, REPRESENTED BY MANAGING DIRECTOR, SIB HOUSE, TB ROAD, MISSION QUARTERS, THRISSUR, PIN - 680001 6 THE AUTHORISED OFFICER, SOUTH INDIAN BANK LTD, SARFAESI ACT, REGIONAL OFFICE, TC/31/151, YWCA BUILING, 3RD FLOOR, MG ROAD, SPENCER JUNCTION STATUE, THIRUVANANTHAPURAM, PIN - 695001 7 THE BRANCH MANAGER, SOUTH INDIAN BANK LIMITED, CHALA BRANCH, SHIVAKAMI BUILDINGS, POWER HOUSE ROAD, FORT P.O., THIRUVANANTHAPURAM, PIN - 695023

BY ADVS. SRI.SUNIL SHANKER SMT.VIDYA GANGADHARAN(K/000424/2020) SMT.SANDHRA.S(K/001610/2021) SRI.ACHUTH KRISHNAN, CGC SRI.SREEJITH V.S., GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.05.2024, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: :3:

N. NAGARESH, J.

W.P.(C) No.5248 of 2023
Dated this the 31st day of May, 2024

JUDGMENT

The 1st petitioner is the sole Proprietor of M/s.Weston Watch Company which is a registered MSME. Respondents 2 and 3 are the wife and son of the 1 st petitioner and guarantors to the loan availed by the 1 st petitioner. The 5th respondent-Bank extended 45 lakhs as loan to the 1 st petitioner. According to the petitioner, though 45 lakhs was sanctioned under ECLGS, only an amount of 21.16 lakhs was released to the petitioner and the remaining 23.84 lakhs was recovered towards loan repayment. This was in gross violation of ECLG Scheme and policy of the Union Government. :4:

2. When the Bank refused to restructure the loan

account of the petitioner in tune with Exts.P7 to P12 Schemes with 100% guarantee from the Government of India, the 1 st petitioner filed W.P.(C) No.951/2023. This Court disposed of the said writ petition directing the competent authority of the Bank to consider and pass orders on Ext.P11 representation. The Bank, however, rejected the petitioner's representation without adverting to or complying with the policies of the Government / RBI guidelines.

3. The petitioners state that the 1st petitioner

submitted a proposal dated 14.07.2022 to the Bank making an offer of 80 lakhs towards One Time Settlement. However, the OTS proposal was rejected by the Bank. The Bank, however, required the petitioner to submit a revised proposal.

4. The petitioners state that Exts.P7 to P12 Schemes mandate that once the loan is restructured, the principal amount shall be paid only after seven years by

servicing the interest portion when demanded. :5:

5. The petitioners pointed out that the secured asset

for the loan is the sole residential building in which the 1 st petitioner is residing with his family. Coercive action taken by the Bank without extending any benefit of revival schemes notified by the Government of India is illegal and unsustainable. The petitioners therefore seek to direct the 5 th respondent to restructure the existing loan in the light of Exts.P7 to P12. The petitioners also seek to direct the 5 th respondent to put on hold all coercive steps initiated against the petitioners.

6. The 6th respondent filed a counter affidavit on

behalf of respondents 5 to 7. On behalf of respondents 5 to 7, the 6th respondent submitted that the respondent-Bank initiated securitisation measures when the petitioners failed to maintain the loan account. Possession notice was served on the petitioners and was published in newspapers. The petitioners initially accepted an OTS which is evident from Ext.R6(b). But, subsequently, the petitioners represented that the accounts are to be restructured. There was complete lack :6: of bona fide on the part of the petitioners.

7. I have heard the learned counsel for the

petitioners, the learned Central Government Counsel representing respondent 1 and 2, the learned Government Pleader representing the 3 rd respondent and the learned Standing Counsel appearing for respondents 5 to 7.

8. There is no dispute that the 5 th respondent-Bank

has advanced finance to the 1 st petitioner. The loan was not repaid promptly. The 5th respondent therefore initiated recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The grievance of the petitioners is that the respondents have not extended the benefit of Exts.P7 to P12 Schemes of the Government of India.

9. It is evident from the counter affidavit filed by

respondents 5 to 7 that the account operation was not satisfactory and the accounts have become NPA on several times. The CCOL accounts were restructured under the Kerala Flood Restructuring Scheme in November, 2018. The :7: 1st petitioner was granted two fresh working capital term loans. The benefit of moratorium was also extended to the 1 st petitioner till 31.07.2019. The petitioner could not service the loan obligations even after the moratorium period.

10. The respondents would also submit that a Funded

Interest Term Loan (FITL) was allowed to the 1 st petitioner and that too with 12-month moratorium on principal and interest repayment. The 1st petitioner was also extended with ECLGS loan of 38.84 lakhs in June, 2020. All the afore facts would indicate that respondents 5 to 7 have extended benefit of various Government Schemes to the 1st petitioner.

11. The further argument of the petitioners is that

multiple proceedings are taken against the 1 st petitioner. The provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are intended to enforce the security interest of the financial institutions. Going by the Scheme of the Act, 2002, the financial institutions are entitled to invoke the provisions of the Securitisation and Reconstruction of Financial Assets and :8: Enforcement of Security Interest Act, 2002 along with any other mode of recovery of loan. It is not correct to argue that the Bank has a right to initiate SARFAESI proceedings only when all other legal measures to recover the loan are exhausted.

12. The attempt of the petitioners is to force

respondents 5 to 7 to stop securitisation proceedings initiated by the Bank alleging violation of the provisions of Government Schemes. Going through the pleadings in the writ petition, I am satisfied that the 5th respondent-Bank has extended the benefit of various Government Schemes to the petitioners. Assuming that there is failure on the part of the Bank to do so, that cannot be a reason for the petitioners to question the proceedings initiated by the Bank under the SARFAESI Act. In view of the afore facts, I find no merit in the contentions of the petitioners as contained in the writ petition. The writ petition is therefore dismissed. Sd/- N. NAGARESH, JUDGE aks/29.05.2024 :9: APPENDIX OF WP(C) 5248/2023 PETITIONERS' EXHIBITS: Exhibit P.1 TRUE COPY OF PRESS RELEASE DATED 20- 05-2020 ISSUED BY PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA Exhibit P.2 TRUE COPY OF ECLGS GUIDELINES DATED

06-10-2022 DOWNLOADED FROM WEBSITE OF NATIONAL CREDIT GUARANTEE TRUSTEE COMPANY LIMITED (NCGTCL), MINISTRY OF FINANCE, GOVERNMENT OF INDIA Exhibit P.3 TRUE COPY OF FAQS ON EMERGENCY CREDIT LINE GUARANTEE SCHEME UPLOADED ON WEBSITE OF NATIONAL CREDIT GUARANTEE TRUSTEE COMPANY LIMITED, MINISTRY OF FINANCE, GOVERNMENT OF INDIA

Exhibit P.4 TRUE COPY OF JUDGMENT DATED 18-01-2023 IN WP (C) NO.951 OF 2023 OF HON'BLE HIGH COURT OF KERALA Exhibit P.5 TRUE COPY OF REPRESENTATION DATED 19- 12-2022 SUBMITTED BY 1ST PETITIONER BEFORE RESPONDENT BANK Exhibit P.6 TRUE COPY OF LETTER DATED 07-02-2023 ISSUED BY 6TH RESPONDENT Exhibit P.7 TRUE COPIES OF RELEVANT PAGES OF CIRCULAR DATED 01-10-2021 ISSUED BY 4TH RESPONDENT Exhibit P.8 TRUE COPIES OF CIRCULAR DATED 23-05- 2020 ISSUED BY NATIONAL CREDIT GUARANTEE TRUSTEE COMPANY, GOVERNMENT OF INDIA Exhibit P.9 TRUE COPY CREDIT GUARANTEE SCHEME FOR SUBORDINATE DEBT (CGSSD) PUBLISHED BY BANK OF MAHARASHTRA Exhibit P.10 TRUE COPY OF FRR FOR MSMES NOTIFIED BY 1ST RESPONDENT Exhibit P.11 TRUE COPY OF CIRCULAR DATED 17-03-2016 ISSUED BY 4TH RESPONDENT Exhibit P.12 TRUE COPY OF CIRCULAR DATED 05-05-2021 ISSUED BY 4TH RESPONDENT. : 10 : Exhibit P.13 TRUE COPY OF LETTER DATED 29-07-2022 ISSUED BY 6TH RESPONDENT Exhibit P.14 TRUE COPY OF LETTER DATED 01-09-2022 ISSUED BY 6TH RESPONDENT Exhibit P.15 TRUE COPY OF LETTER DATED 31-10-2022 ISSUED BY 6TH RESPONDENT Exhibit P.16 TRUE COPY OF THE LETTER DATED 04-08- 2023 ISSUED BY THE BRANCH HEAD, CHALAI BRANCH OF

THE RESPONDENT BANK Exhibit P.17 TRUE COPY OF THE NOTICE DATED 08-09- 2023 ISSUED BY THE ADVOCATE COMMISSIONER Exhibit P.18 TRUE COPY OF THE REPRESENTATION DATED 29-09-2023 SUBMITTED BEFORE THE AUTHORISED OFFICER OF THE RESPONDENT BANK. Exhibit P.19 TRUE COPY OF THE NOTICE DATED 20-11- 2023 ISSUED BY THE ADVOCATE COMMISSIONER. RESPONDENTS' EXHIBITS: Exhibit R6(a) TRUE COPY OF THE LETTER OF THE RESPONDENT BANK DATED 03.04.2021 Exhibit R6(b) TRUE COPY OF THE LETTER OF THE 6TH RESPONDENT BANK DATED 31.10.2022 Exhibit R6(c) TRUE COPY OF THE LETTER DATED 16.10.2023 ISSUED BY THE 7TH RESPONDENT.