Nassar, vs Authorised Officer/Assistant General Manager,

Nassar, vs Authorised Officer/Assistant General Manager,

SooperKanoon Citation : sooperkanoon.com/1300952

Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/30093/2023

Appellant : Nassar,

Respondent : Authorised Officer/Assistant General Manager,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 WP(C) NO. 30093 OF 2023 PETITIONER: NASSAR, AGED 47 YEARS S/O HUSSAIN, KARUVARAKUNNIL (H) IRIMBILIYAM P.O, MECHERI PARAMBU MALAPPURAM - 679572 BY ADV L.RAJESH NARAYAN RESPONDENTS: 1 AUTHORISED OFFICER/ASSISTANT GENERAL MANAGER, THE PONNANI CO-OPERATIVE URBAN BANK LTD NO.M.372 HEAD OFFICE, C.V JUNCTION, PONNANI, MALAPPURAM - 679577 2 BRANCH MANAGER, THE PONNANI CO-OPERATIVE URBAN BANK LTD NO.M.372 VALIYAKUNNU BRANCH, PONNANI, MALAPPURAM, PIN - 679577 BY ADV SHOBY K.FRANCIS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024, ALONG WITH WP(C).2614/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH THURSDAY, THE 29TH DAY OF FEBRUARY 2024/10TH PHALGUNA, 1945 WP(C) NO. 41383 OF 2023 PETITIONER: NASSAR AGED 47 YEARS S/O HUSSAIN, KARUVARAKUNNIL (H) IRIMBILIYAM P.O, MECHERI PARAMBU MALAPPURAM, PIN - 679572 BY ADV L.RAJESH NARAYAN RESPONDENTS: 1 AUTHORISED OFFICER/ASSISTANT GENERAL MANAGER THE PONNANI CO-OPERATIVE URBAN BANK LTD NO.M.372 HEAD OFFICE, C.V JUNCTION, PONNANI MALAPPURAM, PIN - 679577 2 BRANCH MANAGER THE PONNANI CO-OPERATIVE URBAN BANK LTD NO.M.372 VALIYAKUNNU BRANCH, PONNANI, MALAPPURAM, PIN - 679577 BY ADVS. SHOBY K.FRANCIS AGI SHOBY(A-768) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024, ALONG WITH WP(C).2614/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH THURSDAY, THE 29TH DAY OF FEBRUARY 2024/10TH PHALGUNA, 1945 WP(C) NO. 2614 OF 2024 PETITIONER: SALEEM P AGED 58 YEARS S/O MUHAMMAD, PULIKKALAKATHU (H) CHANKUVETTIKUNDU, KOTTAKKAL MALAPPURAM, PIN - 676503 BY ADV L.RAJESH NARAYAN RESPONDENTS: 1 AUTHORISED OFFICER/ASSISTANT GENERAL MANAGER THE PONNANI CO-OPERATIVE URBAN BANK LTD NO.M.372 HEAD OFFICE, C.V JUNCTION, PONNANI, MALAPPURAM, PIN - 679577 2 BRANCH

MANAGER THE PONNANI CO-OPERATIVE URBAN BANK LTD NO.M.372 VALIYAKUNNU BRANCH, PONNANI, MALAPPURAM, PIN - 679577 BY ADVS. SHOBY K.FRANCIS AGI SHOBY(A-768) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024, ALONG WITH WPC NOS.30093/2023, FOLLOWING:

JUDGMENT

Dated this the 29th day of February, 2024 [WP(C) Nos.30093 and 41383 of 2023 and 2614 of 2024] The petitioner in W.P.(C) Nos.30093 and 41383 of 2023 had availed a loan from the Ponnani Co-operative Urban Bank Limited in the year 2018 of an amount of 52 lakhs, to be repaid in 96 monthly installments. The loan is secured by mortgage of 4 items of properties totaling 84.06 Cents.

2. The petitioner states that he was prompt in

repayment of loans and was effecting repayments in a regular manner. Substantial payments were made in discharge of the liability. The statement of accounts with respect to the loans would reveal the fact that substantial repayments have been made to the account. The petitioner was never issued with any notice from the Bank regarding initiation of any proceedings for recovery.

3. The petitioner was taken aback on receipt of a notice

from the respondents intimating that they are proceeding with further steps for recovery. Consequently, the petitioner approached the Bank and expressed his willingness to regularize the loan account after effecting payment of the outstanding amounts, but the same was not acceded to.

4. The petitioner therefore approached this Court filing W.P.(C) No.30093 of 2023 and this Court granted an interim

order deferring the proceedings initiated under the SARFAESI

Act against the petitioner on conditions. The petitioner could not raise sufficient amounts to comply with the interim order of this Court and sought for extension of time. In the meanwhile, the Advocate Commissioner appointed by the Chief Judicial Magistrates Court, Manjeri came to take possession of the mortgaged property. The Advocate Commissioner along with the officials of the Bank took two cheques from the petitioner, which is arbitrary and illegal.

5. The petitioner submits that he is not a chronic

defaulter and substantial repayments have been made to the loan accounts. The petitioner states that he is ready and willing to clear the outstanding amounts in instalments and to get the loans regularised. Seeking direction to the respondents to reschedule the loan accounts of the petitioner and to regularise the loan accounts, after accepting the overdue amounts in instalments, the petitioner again filed W.P.(C) No.41383 of 2023.

6. The petitioner in W.P.(C) No.2614 of 2024 has

availed a loan from the Ponnani Co-operative Urban Bank Limited. The petitioner has approached this Court seeking direction to the respondents not to proceed against the property of the petitioner covered by Ext.P1, for realisation of amounts due from the borrowers to whom Ext.P3 notice has been issued. The borrower had already approached this Court filing W.P.(C) Nos.30093 and 41383 of 2023.

7. The petitioner states that he has availed the loan by

mortgaging a property having 21.85 cents. The petitioner was prompt in repayment of the amounts and was effecting payments in a regular manner. The petitioner was taken aback on receipt of notice from the respondents under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

8. The petitioner states that the property which was

purchased by the petitioner as per Ext.P1 was never offered as a security for the loan with respect to which Ext.P3 notice pertains. In fact, the petitioner has availed a separate loan and the same cannot be clubbed with that of the principal borrower to whom Ext.P3 notice has been issued. The loans are separate and distinct and the petitioners property cannot be proceeded against for realization of amounts due from them.

9. It is therefore necessary that appropriate directions

be issued to the Bank to permit the petitioner to conduct private sale of the property of the petitioner and not to proceed against the same for realisation of the amounts due from the borrower to whom Ext.P3 notice has been issued.

10. The petitioner submitted that the attempt of the Bank

for taking coercive action against the property of the petitioner without issuing any notice is illegal and arbitrary. The respondents have no authority to proceed against the property of the petitioner as the same has not been offered as security for any loan other than one taken by the petitioner. The action of the respondents has forced the petitioner to approach this Court.

11. Standing Counsel representing the Bank in

W.P.(C) No.30093 of 2023 submitted that there was no substantial repayment of loan amount and the loan account became NPA from 29.06.2018. In spite of request made by the Bank, the petitioner did not take any steps to maintain the loan account. Therefore, a demand notice under the SARFAESI Act was issued. As on 25.10.2023, the total amount outstanding in the loan account of the petitioner is 12,72,557/- and the overdue amount is 10,80,866/-. The petitioner has not paid 2 lakhs as directed by this Court in the interim order dated 06.10.2023.

12. The respondents filed counter affidavit in W.P.(C)

No.41383/2023 also. The loan account became NPA on 27.09.2019. Symbolic possession of the property was taken on 04.03.2021. Total outstanding amount in the Cash Credit facility as on 07.12.2023 is 95,14,850/-. Now, the total liability as on 07.12.2023 is 1,98,02,239/-. There is no question of restructuring of the loan amount now.

13. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondents.

14. In W.P.(C) No.30093/2023, the petitioner seeks to

command the respondents to defer further coercive proceedings pursuant to Ext.P3. Ext.P3 is a notice for sale issued under Rule 8 of the Security Interests (Enforcement) Rules. What is under challenge in W.P.(C) No.41283/2023 is Ext.P4 proceedings, which is a notice issued by the Advocate Commissioner pursuant to an order passed by the Chief Judicial Magistrate, Manjeri under Section 14 of the SARFAESI Act. In W.P.(C) No.2614/2024, the petitioner challenges proceedings of the Bank proposed against the property covered by Ext.P1 deed, under the SARFAESI Act.

15. It is evident that in all the three writ petitions, the

petitioners are challenging proceedings initiated under the SARFAESI Act. As the petitioners have an effective alternate remedy against those proceedings under Section 17 of the SARFAESI Act, I am not inclined to grant any relief to the petitioners in these writ petitions. At this stage, the petitioners sought leave of this Court to approach the Bank for One Time Settlement of the loan accounts. If the Bank has a Scheme for One Time Settlement, there cannot be any objection for the Bank to consider the request of the petitioners for One Time Settlement. In the facts and circumstances, the writ petitions are disposed of permitting the petitioners to approach the Bank for a One Time Settlement of the loan account. Sd/- N.NAGARESH JUDGE spk APPENDIX OF WP(C) 30093/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE STATEMENT OF ACCOUNTS WITH RESPECT TO THE LOAN ACCOUNT OF THE PETITIONER Exhibit P2 TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT DATED 29.1.2021 UNDER S.13(2) OF THE ACT Exhibit P3 TRUE COPY OF THE NOTICE DATED 19.8.2023 NO. SARFAESI/2/VKU/ML-568/2019-20 APPENDIX OF WP(C) 41383/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT DATED 29.1.2021 UNDER S.13(2) OF THE ACT Exhibit P2 TRUE COPY OF THE NOTICE DATED 19.8.2023 NO. SARFAESI/2/VKU/ML-568/2019-20 Exhibit P3 TRUE COPY OF THE INTERIM ORDER DATED 19.10.2023 IN WPC NO.30093/2023 Exhibit P4 TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DATED 2.11.2023

IN MC NO.509/2023 OF CJM COURT, MANJERI Exhibit P5 TRUE COPY OF THE CHEQUES DATED 20.11.2023 Exhibit P6 TRUE COPY OF THE STATEMENT FILED BY THE RESPONDENT IN WPC NO.30093/2023 DATED 8.11.2023 RESPONDENT EXHIBITS EXHIBIT R (1)A A TRUE COPY OF THE NOTICE ISSUED BY THE BANK UNDER SEC.13(4) OF THE SARFAESI ACT, 2002 TO THE PETITIONER EXHIBIT R (1)B A TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DATED 19-9-2023 IN M C NO. 509/2023 TO THE PETITIONER EXHIBIT R (1)C A TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DATED 2-11-2023 IN MC NO. 509/2023 TO THE PETITIONER

EXHIBIT R(1) D   A TRUE COPY OF THE RECEIPT ISSUED BY

PRODUCED BEFORE THE CJM COURT, MANJERI AS CMP NO. 80/2023 EXHIBIT R(1) E A TRUE COPY OF THE ORDER IN M C NO. MANJERI DATED 31-3-2023 EXHIBIT R(1) F A TRUE COPY OF THE ORDER DATED 14-9- 2023 PASSED BY THIS HON'BLE COURT IN WP CNO. 30093/2023 APPENDIX OF WP(C) 2614/2024 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE SALE DEED NO.4245/2015 DATED 7.12.2015 OF VALANCHERY SRO Exhibit P2 TRUE COPY OF THE BASIC TAX RECEIPT DATED 29.6.2019 Exhibit P3 TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT DATED 29.1.2021 UNDER S.13(2) OF THE ACT Exhibit P4 TRUE COPY OF THE NOTICE DATED 19.8.2023 NO. SARFAESI/2/VKU/ML-568/2019-20 Exhibit P5 TRUE COPY OF THE INTERIM ORDER DATED 19.10.2023 IN WPC NO.30093/2023 Exhibit P6 TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DATED 2.11.2023 IN MC NO.509/2023 OF CJM COURT, MANJERI