Basheer vs the Authorized Officer

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/3506/2024

Appellant : Basheer

Respondent : The Authorized Officer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945 WP(C) NO. 3506 OF 2024 PETITIONER: BASHEER AGED 49 YEARS, S/O IBRAHIM, KUNIYIL HOUSE, EDAVAKA POST, EDAVAKA, WAYANAD, PIN - 670 645. BY ADVS. M.R.SASITH R.K.CHIRUTHA RESPONDENT: THE AUTHORIZED OFFICER KERALA STATE CO-OPERATIVE BANK LTD, WAYANAD, KALPETTA NORTH, WAYANAD, PIN - 673 122. BY ADV ATHUL SHAJI THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

JUDGMENT

Dated this the 1st day of February, 2024 The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Kerala State Co-operative 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 9,25,000/- to the petitioner, 8 lakhs as Agricultural Loan, 1 lakh as Ordinary Loan and 25,000/- as Covid Suraksha Loan in the years 2021 and

2022. 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. The repayment of loans fell into arrears later due to financial difficulty . 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 overdue 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 Ext.P1 notice.

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

clear the overdue amounts towards the loans, 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 loans were given to the petitioner in the years 2021 and

2022. The petitioner committed default in repaying the loans. :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 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 outstanding 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 01.02.2024 is 11,35,387/-.

8. I have heard the learned Counsel for the petitioner and the learned Standing Counsel representing the Bank. :5:

9. The specific case of the petitioner is that the

petitioner has been making the repayment and maintaining the loan accounts initially. The default in repayment of the loan accounts 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 his liability.

11. The writ petition is therefore disposed of with the following directions:

(i) The petitioner shall remit the outstanding amount of 11,35,387/- in 12 equal and consecutive monthly instalments along with accruing interest and other Bank charges, if any.

(ii) First of such instalments shall be paid on or before 29.02.2024. :6:

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

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

AMR :7: APPENDIX OF WP(C) 3506/2024 PETITIONERS EXHIBITS Exhibit P1 THETRUE COPY OF THE POSSESSION NOTICE DATED 13.12.2023. Exhibit P2 THE TRUECOPYOF THE REPRESENTATION DATED NILLS FILED BY THE PETITIONERTOTHE HON'BLE CHIEF MINISTER OF KERALA.