Jacob C.a vs the Authorised Officer Under Sarfaesi Act 2002

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Court : Kerala

Decided On : Feb-12-2024

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/5034/2024

Appellant : Jacob C.a

Respondent : The Authorised Officer Under Sarfaesi Act 2002

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH MONDAY, THE 12TH DAY OF FEBRUARY 2024 / 23RD MAGHA, 1945 WP(C) NO. 5034 OF 2024 PETITIONER: JACOB C.A AGED 60 YEARS, S/O AUGUSTINE CHENNAPPALLIL HOUSE, VALAPADY, KALICHANADUKKAM P.O, KASARGOD PIN - 671314. BY ADV JOSE J.MATHAIKAL RESPONDENTS: 1 THE AUTHORISED OFFICER UNDER SARFAESI ACT 2002 THE KERALA STATE COOPERATIV EBANK LIMITED, P.B NO 35, KANNUR REGIONAL OFFICE - 670001. 2 THE BRANCH MANAGER KERALA STATE COOPERATIVE BANK LTD, KALICHANADUKKAM BRANCH , KALICHANDUKKAM P.O, KASARGOD DISTRICT, PIN - 671314. BY ADV.SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

JUDGMENT

Dated this the 12th 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 20 lakhs to the petitioner in the

year 2016 and 1.90 lakhs in the year 2019 as Housing Loan. 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 Covid-19 pandemic. The repayment of loans fell into arrears. It :3: 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 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.P3 and P4 notices.

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 respondents are permitted to continue with the coercive proceedings and auction the secured :4: 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 loans were given to the petitioner in the years 2016 and 2019. 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.P3 and P4 notices were issued in these circumstances. The

:5: 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 is 31,90,141/- and the overdue amount as on 31.01.2024 is 14,53,998/-.

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 accounts initially. The default in repayment occurred lately due to reasons beyond the :6: 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 an amount of 3 lakhs within a period of one month from today.

(ii) The petitioner shall remit the balance overdue amount in subsequent consecutive 10 equal monthly instalments thereafter, along with accruing interest and :7: other Bank charges, if any.

(iii) 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.

(iv) The petitioner shall also pay current EMIs along with the aforesaid payments.

(v) If the petitioner makes payments as directed above, coercive proceedings, if any, against the petitioner shall stand deferred. Sd/- N. NAGARESH JUDGE

ams :8: APPENDIX OF WP(C) 5034/2024 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF BANK PASS BOOK FOR FIRST LOAN OF RS. 2000000 Exhibit P2 TRUE COPY OF THE BANK PASS BOOK WITH RESPECT TO LOAN FOR RS. 200000 Exhibit P3 TRUE COPY OF NOTICE DATED 9/10/2023 ISSUED WITH RESPECT TO LOAN OF RS. 2000000 (TWENTY LAKHS) Exhibit P4 TRUE COPY OF NOTICE DATED 9.10.2023 WITH RESPECT TO LOAN FOR RS. 200000/- Exhibit P5 TRUE COPY OF MEDICAL PRESCRIPTION OF THE PETITIONER DATED 23/4/2020