# Devadasan vs Authorised Officer

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**SooperKanoon Citation** : sooperkanoon.com/1312946

**Court** : Kerala

**Decided On :** Mar-01-2024

**Judge** : Honourable Mr.Justice N.Nagaresh

**Appeal No.** : WP(C)/38642/2023

**Appellant** : Devadasan

**Respondent** : Authorised Officer

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH FRIDAY, THE 1ST DAY OF MARCH 2024 / 11TH PHALGUNA, 1945 WP(C) NO. 38642 OF 2023 PETITIONER: DEVADASAN AGED 62 YEARS S/O.KUTTAPPAN, RESIDING AT MP X/314, KARYNYAM, KODITHOOKKIKUNNU, KAVALAYOOR, ARKALA, THIRUVANANTHAPURAM DISTRICT, PIN - 695144 BY ADVS. P.M.SHAHIDA V.HARI RESPONDENTS: 1 AUTHORISED OFFICER STRESSED ASSET RECOVERY BRANCH, (SARB) LMD COMPOUND, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM DISTRICT, PIN - 695003 2 THE CHIEF MANAGER STATE BANK OF INDIA, PANAVILA BRANCH, KOUSTHUBHAM COMMERCIAL COMPLEX, PANAVILA,

THIRUVANANTHAPURAM DISTRICT, PIN - 695014 SRI.JITHESH MENON, STANDING COUNSEL THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

Dated this the 1st day of March, 2024 The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the State Bank of India to the petitioners son, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid 22 lakhs to the petitioners son as

Housing Loan in the year 2018. The petitioner stood as guarantor to the above loan. The petitioner states that though the petitioners son made remittances promptly during the initial repayment period of the financial advance, he could not pay the repayment instalments promptly later due to treatment expenses. The repayment of loan fell into arrears later. It 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 Ext.P4 notice.

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

clear the overdue amounts towards the loan, if sufficient time is given to clear the dues in easy monthly instalments. If the Bank 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 2nd respondent, it is submitted that the loan was given to the petitioner s son in the year 2018. The petitioners son committed default in repaying the loan.

6. The Bank repeatedly reminded the petitioner and

his son and required them to clear the dues. They 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.P4 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 01.03.2024 is 22,55,224/-.

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 loan 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:

(i) The petitioner shall remit 5 lakhs on or before 25.03.2024 and the balance outstanding amount in ten consecutive and equal monthly instalments along with accruing interest and other Bank charges, if any.

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

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

spk APPENDIX OF WP(C) 38642/2023 PETITIONER EXHIBITS Exhibit -P1 TRUE COPY OF THE DEATH CERTIFICATE DATED 16/05/2023 ISSUED BY CORPORATION, THIRUVANANTHAPURAM Exhibit -P2 TRUE COPY OF THE JUDGMENT DATED. 19.09.2023 IN WP(C). 30669/2023 PASSED BY THIS HON'BLE COURT Exhibit -P3 TRUE COPY OF THE RECEIPT ISSUED BY THE RESPONDENT BANK DATED 25.08.2023 Exhibit -P4 TRUE COPY OF THE NOTICE DATED 10.11.2023 ISSUED BY THE ADVOCATE COMMISSIONER