

Mohammed Mangat vs the Authorized Officer, Manjeri Co-Operative Urban Bank Ltd,

Mohammed Mangat vs the Authorized Officer, Manjeri Co-Operative Urban Bank Ltd,

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/28981/2023

Appellant : Mohammed Mangat

Respondent : The Authorized Officer, Manjeri Co-Operative Urban Bank Ltd,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH
AGRAHAYANA, WP(C) NO. 28981 OF 2023 PETITIONER:
MOHAMMED MANGAT AGED 55 YEARS S/O ABOOBACKER @
SIDDHIQ MOLLA, KUTTIYIL HOUSE, CHENAKKALANGADY POST,
THENHIPALAM, ARIPPARA ROAD, MALAPPURAM DISTRICT., PIN -
673636 BY ADV K.RAVI (PARIYARATH) RESPONDENTS: 1 THE
AUTHORIZED OFFICER, MANJERI CO-OPERATIVE URBAN BANK
LTD, COURT ROAD, MANJERI POST, MALAPPURAM DISTRICT., PIN

- 676121 2 THE BRANCH MANAGER , MANJERI CO-OPERATIVE URBAN BANK LTD, CALICUT UNIVERSITY BRANCH , THENHIPALAM, MALAPPURAM DISTRICT., PIN - 673635 BY ADV K.VIDYASAGAR, R1 AND R2 THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

N.NAGARESH, J.

----- Dated this the 30th day of
November, 2023

JUDGMENT

The Petitioner, a contractor by profession, availed Over Draft facility from the 2nd respondent-Bank initially for Rs.2 lakhs. During 2015, petitioner's OD was raised to Rs.40,00,000/-. As a security for the loan availed, an extent of 28 cents of land with a house situated therein, in Re-Survey No.385/3, 386/4 of Thenhipalam Amsom and Desom, Thenhipalam Village, Thiroorangadi Taluk, Malappuram District was provided.

2. Because of severe financial crisis, amounts could not

be repaid as agreed, resulting in the 2nd respondent-Bank initiating proceedings to recover the dues resorting to the provisions of SARFAESI Act, 2002. Now, the petitioner is in receipt of a notice issued by the Advocate Commissioner appointed by the Chief judicial Magistrate's Court, Manjeri in CrI.M.P.No.8/2020 in M.C.No.13/2020 dated 29.07.2023, intimating the petitioner about the taking over of physical possession of the secured assets.

3. The petitioner states that severe financial crisis and

the subsequent Covid-19 pandemic adversely affected his income and resulted in default in payment. To make matters worse, the petitioner himself suffered Covid, which kept him away from work for considerable period of time. Though the petitioner sought time to clear the liability, the respondents are not agreeing for

such course.

4. When the writ petition came up for admission on 20.09.2023, this Court directed the petitioner to remit Rs.10 lakhs on or before 18.10.2023. The interim order was extended till the next posting date.

5. The Standing Counsel appearing for the respondents

submitted that the petitioner had availed a business loan of Rs.40,00,000/- as Cash Credit facility. The loan was availed in the year 2016 and the repayment period was 12 months. The petitioner had mortgaged certain property as security. The petitioner failed and neglected to pay the loan amount with interest as agreed. The loan account was, therefore, declared as NPA. Annexure-R1(a) demand notice was issued to the petitioner on 04.09.2018 invoking Section 13(2) of the SARFAESI Act.

6. The petitioner did not pay the amount. Thereafter,

possession notice was issued to the petitioner. Annexure-R1(b) sale notice was published on 12.10.2021. As there were no bidders, sale could not take place on that date. A subsequent sale notice was issued on 23.11.2021 as per Annexure-R1(c). Then also, there were no bidders. Again another sale notice was issued on 10.12.2021 as per Annexure-R1(d). As there were no bidders, the Bank itself purchased the property on 29.12.2021. The property now remains as a 'Non-Banking Asset' of the Bank.

7. The respondents, thereafter, initiated steps for taking

physical possession of the property and the Chief Judicial Magistrate passed an order under Section 14(1) of the SARFAESI Act and an Advocate Commissioner was appointed. The petitioner has approached this Court at this stage. As on 09.11.2023, the petitioner has to pay an amount of Rs.85,51,243/- with accrued interest and cost. The petitioner is not entitled to any relief, contented the Standing Counsel appearing for the respondents.

8. I have heard the counsel for the petitioner and the Standing Counsel for the respondents.

9. The total amount due from the petitioner is more than

Rs.83 lakhs. The Bank has been trying to realise the amount by putting the secured property for sale repeatedly. There were no bidders. Ultimately, the Bank itself purchased the property. The loan was originally given in the year 2015.

10. This Court passed an interim order directing the petitioner to pay an amount of Rs.10 lakhs on or before 18.10.2023. The petitioner could not remit the said amount. Taking into consideration the afore facts, I am of the opinion that this is not a fit case to grant a discretionary relief under Article 226 of the Constitution of India. The writ petition

is, therefore, dismissed. However, the petitioner will be at liberty to approach the Bank for any further negotiation in the matter. Sd/- N.NAGARESH JUDGE bng
APPENDIX OF WP(C) 28981/2023 PETITIONER EXHIBITS EXHIBIT 1 TRUE
COPY OF THE NOTICE ISSUED BY THE

2ND RESPONDENT, TO THE PETITIONER , STATING THE STATUS OF THE
LOAN ACCOUNT, AVAILED BY THE PETITIONER, DATED , 24.08.2023.
EXHIBIT -P2 TRUE COPY OF THE POSSESSION NOTICE ISSUED AT THE
INSTANCE OF THE 1ST RESPONDENT TO THE PETITIONER, UNDER 13(4)
OF THE SARFASI ACT,2002, DATED 17.06.19. EXHIBIT -P3 TRUE COPY OF
THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER, APPOINTED BY
THE HON'BLE CHIEF JUDICIAL MAGISTRATE, COURT, MANJERI , IN CRL. M.
P. NO. 29.07.2023.

RESPONDENT ANNEXURES ANNEXURE-R1(A) A TRUE COPY OF THE
DEMAND NOTICE DATED 04.09.2018 UNDER SECTION 13(2) OF THE
SARFAESI ACT ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
ANNEXURE-R1(B) A TRUE COPY OF THE SALE NOTICE DATED 12.10.2021
ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER. ANNEXURE-R1(C)
TRUE COPY OF THE SALE NOTICE DATED 23.11.2021 ISSUED BY THE 1ST

RESPONDENT TO THE PETITIONER. ANNEXURE-R1(D) TRUE COPY OF THE SALE NOTICE DATED 10.12.2021 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

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