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Ithikutty vs the Manager

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Court : Kerala

Decided On : Nov-01-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/35621/2023

Appellant : Ithikutty

Respondent : The Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945 WP(C) NO. 35621 OF 2023 PETITIONERS: 1 ITHIKUTTY AGED 64 YEARS, W/O MUHAMMED, KOTTAYIL, MEPPADI P.O., THINAPURAM, MUPPAINAD WAYANAD DIST., PIN - 673577. 2 MUHAMMED AGED 71 YEARS, S/O MOSSAKUTTY, KOTTAYIL, MEPPADI P.O., THINAPURAM, MUPPAINAD WAYANAD DIST., PIN - 673577. BY ADV CELINE JOSEPH RESPONDENTS: 1 THE MANAGER IDBI BANK LTD, KALPETTA BRANCH, WAYANAD DISTRICT, PIN - 673121. 2 THE IDBI BANK LTD REPRESENTED BY ITS GENERAL MANAGER AND AUTHORISED OFFICER,MANOJ

KUMAR K. S, S/O C.NANU, AGED 53 YEARS,RETAIL RECOVERY, REGIONAL OFFICE, PANAMPILLY NAGAR, ERNAKULAM, PIN - 682036. BY ADV C.AJITH KUMAR THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

JUDGMENT

Dated this the 1st day of November, 2023 The petitioners have approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the IDBI Bank Limited to the petitioners, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid 11,00,000/- to the petitioners as loan

in the year 2016. The petitioners state that though the petitioners made remittances promptly during the initial repayment period of the financial advance, they could not pay the repayment instalments and maintain the account promptly later. The repayment of loan / advance fell into arrears later.

3. Though the petitioners requested the Bank to permit the petitioners to repay the overdue amounts in easy monthly :3:

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 invoking Section 13(4) of the Securitisation and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002.

4. The petitioners state that they are 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 respondents are permitted to continue with the coercive proceedings and auction the secured assets provided by the petitioners, they 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 petitioners. On behalf of the respondents, it is submitted that the loan / advance was given to the petitioners in the year 2016. The petitioners :4: committed default in repaying the loan / maintaining the credit facility.

6. The Bank repeatedly reminded the petitioners and

required them to clear the dues. The petitioners deliberately omitted to do so. In the circumstances, the Bank had no other go, than to proceed against the petitioners 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 petitioners have not advanced any legal reasons to thwart the coercive proceedings initiated by the Bank.

7. The Standing Counsel, however, submitted that if the

petitioners are 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 petitioners to clear the dues. The Standing Counsel submitted that the outstanding amount due to the Bank from the petitioners as on 31.10.2023 is 7,82,681/-.

:5:

8. I have heard the counsel for the petitioners and the Standing Counsel representing the Bank.

9. The specific case of the petitioners is that the

petitioners have been making the repayment and maintaining the account initially. The default in repayment to the account occurred lately due to reasons beyond the control of the petitioners. The petitioners have 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 petitioners to clear off the liability.

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

(i) The petitioners shall remit the outstanding

amount in ten equal and consecutive monthly instalments along with accruing interest and other Bank charges, if any. First of the :6: instalment shall be paid on or before 01.12.2023.

(ii) If the petitioners commit default in making payments as directed above, the respondents will be at liberty to continue with coercive proceedings against the petitioners in accordance with law.

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

ams :7: APPENDIX OF WP(C) 35621/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE POSSESSION NOTICE DATED 23.03.2023 ISSUED BY THE RESPONDENT. Exhibit P2 TRUE COPY OF THE NOTICE DATED 16/1/2023 ISSUED UNDER SECTION 13(2) OF THE SARFAESI ACT Exhibit P3 TRUE COPY OF THE ACCOUNT STATEMENT DATED 22.05.2023 ISSUED BY THE 1ST RESPONDENT SHOWING THE TRANSACTION OF THE AMOUNT IN THE ACCOUNT OF THE 1ST PETITIONER

Exhibit P4 TRUE COPY OF THE LOAN RECALL NOTICES DATED 03.12.2022 ISSUED TO THE PETITIONERS. Exhibit P5 TRUE COPY OF THE NOTICE DATED 13.01.2023 ISSUED TO THE 2ND PETITIONER BY THE RESPONDENTS Exhibit P6 TRUE COPY OF THE NOTICE DATED 10/7/2023 ISSUED BY THE ADVOCATE COMMISSIONER Exhibit P7 TRUE COPY OF THE C.MP NO.3202/2023 IN

CMP NO.2209/2023 DATED 26.05.2023 FOR A DIRECTION TO REFER THE MATTER FOR SETTLEMENT UNDER THE PROVISIONS OF LEGAL SERVICES

AUTHORITIES Exhibit P8 TRUE COPY OF THE ORDER DATED 19.08.2023 PASSED BY THE CHIEF JUDICIAL MAGISTRATE COURT, KALPETTA Exhibit P9 TRUE COPY OF THE STATEMENT OF ACCOUNT DATED 14/10/2016 ISSUED BY THE KALPETTA BRANCH

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