

K. Subramanian vs the Uco Bank, Represented by Its Branch Manager

K. Subramanian vs the Uco Bank, Represented by Its Branch Manager

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Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/41626/2022

Appellant : K. Subramanian

Respondent : The Uco Bank, Represented by Its Branch Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944
WP(C) NO. 24332 OF 2022 PETITIONER/S:

1 K. SUBRAMANIYAN AGED 63 YEARS S/O LATE KUTTAPANIKKAN
KESAVAN, REGISTERED A CLASS CONTRACTOR KERALA STATE,
MYTHRI (PUTHUVIL VEEDU), MYLAKKADU P.O., KOLLAM, PIN -
691571 2 SHAJIKUMAR AGED 55 YEARS S/O SUKUMARAN NAIR,
BUSINESS, BEENA NIVAS, PLAKADU, ADICHANALLOOR P.O.,
CHANTHANNOOR, KOLLAM., PIN - 691573 3 NIDHEESH KUMAR
AGED 37 YEARS S/O LATE SUDHEESH KUMAR, BUSINESS,

NIDHEESH BHAVAN, ELAMPALLOR, KUNDARA P.O. , KOLLAM, PIN - 691510 BY ADVS. M.P.RAMNATH P.RAJESH (KOTTAKKAL) K.J.SEBASTIAN M.VARGHESE VARGHESE UMA R.KAMATH S.SANDHYA BEPIN PAUL SHALU VARGHESE S.DEEPAK ANTONY THARIAN K.S AKSHAY MOHAN

RESPONDENT/S: 1 UCO BANK 10, B.T.M. SARANI, BRABOUNE ROAD, KOLKATTA, PIN. 700001, AND HAVING BRANCH OFFICE AT, KHAISE BUILDING BEACH ROAD KOLLAM. REPRESENTED BY ITS BRANCH MANAGER KOLLAM BRANCH, PIN - 691001 2 UCO BANK ZONAL OFFICE, RAVIPURAM, PERUMANOOR, KOCHI. REPRESENTED BY THE ZONAL MANAGER., PIN - 682001 THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944 WP(C) NO. 41626 OF 2022 PETITIONER/S: 1 K. SUBRAMANIAN AGED 63 YEARS S/O. KUTTAPANIKKAN KESAVAN, MYTHRI (PUTHUVIL VEEDU), MYLAKKAD P.O., KOLLAM, PIN - 691571 2 B. SHEELA AGED 54 YEARS W/O. K. SUBRAMANIAN, MYTHRI (PUTHUVIL VEEDU), MYLAKKAD P.O., KOLLAM, PIN - 691571 BY ADVS. V.K.PEERMOHAMED KHAN GIRISH KUMAR V.C RESPONDENT/S: 1 THE UCO BANK, REPRESENTED BY ITS BRANCH MANAGER KOLLAM BRANCH. KHAISE BUILDING, BEACH ROAD, KOLLAM, PIN - 691001 2 THE AUTHORISED OFFICER UCO BANK, KOLLAM BRANCH. KHAISE BUILDING, BEACH ROAD, KOLLAM , PIN - 691001 OTHER PRESENT: ADV. DEEPAK JOY (SC) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..3..

JUDGMENT

Dated this the 3rd day of January, 2022 When these matters are taken up for consideration today, the submission of the learned counsel appearing for the respondent bank that the petitioners had approached this court by filing W.P.(C)No. 24332/2022, and this court had passed an interim order on 24.08.2022 as follows: Taking of physical possession of the secured assets of the petitioners, shall stand deferred till 30.09.2022 on condition that a sum of Rs.65,00,000/- (Rupees sixty five lakhs only) is paid towards loan liability before 30.09.2022. It is made clear that no extension of time will be granted for remittance of the above amount.

2. It is submitted that without complying with the

condition, the petitioners have now approached this court by filing W.P.(C) No.41626/2022. It is submitted that the present Writ Petition is therefore not maintainable and is liable to be ..4.. dismissed. The learned counsel appearing for the petitioners submits that the sale proposed to be held on 23.12.2022 did not fructify for want of bidders and this Writ Petition, therefore, be closed directing the bank take a decision on Ext.P8 request made by the petitioners. It is submitted that pursuant to the interim

order in W.P.(C) No. 24332/2022 a sum of Rs.35,00,000/- has

already been paid by the petitioners. It is also submitted that the default occurred only on account of the fact that huge amounts due to the petitioners from the Kerala State Electricity Board have not been paid. Reference is made in this regard to Ext.P3

judgment of this court in W.P. (C) No. 3449/2022.

3. The learned counsel appearing for the respondent bank

submits that Ext.P8 request is for issuance of bank guarantee etc and has nothing to do with the clearance of the liability in instalments. It is submitted that the bank has no objection in considering Ext.P8 and issuing a reply to the petitioners.

Having heard the learned counsel appearing for the ..5.. petitioners and the learned counsel appearing for the respondent bank and despite being convinced that these Writ Petitions are not maintainable, I am of the opinion that these Writ Petitions can be disposed of directing the bank to consider Ext.P8 request within a period of two weeks from today. Till such time as Ext.P8 request is considered and a decision thereon is communicated to the petitioners, further proceedings under the SARFAESI Act shall be kept in abeyance. Sd/- GOPINATH P. JUDGE RMV ..6.. APPENDIX OF WP(C) 24332/2022 PETITIONER EXHIBITS Exhibit P1 THE TRUE PHOTOSTAT COPY OF THE NOTICE UNDER SECTION

13(2) OF THE SARFAESI ACT DATED 05.04.2022 AND BEARING REFERENCE AS UCO/KOLLAM/ RECOVERY/2022 - 23 ISSUED BY THE 1 ST RESPONDENT TO THE 1 ST PETITIONER Exhibit P2 THE TRUE PHOTOSTAT COPY OF THE NOTICE UNDER SECTION 13(2) OF THE SARFAESI ACT DATED 30.03.2022 AND BEARING REFERENCE AS CO/KOLLAM/ RECOVERY/2021 - 22 ISSUED BY THE 1 ST RESPONDENT TO THE 3 RD PETITIONER Exhibit P3 P3.THE TRUE PHOTOSTAT COPY OF THE POSSESSION NOTICE DATED 15.06.2022 ISSUED UNDER RULE 8 (1) OF THE SECURITY INTEREST (ENFORCEMENT)RULES 2002 BY THE RESPONDENTS TO THE 1 ST PETITIONER, HIS WIFE AND 2 ND PETITIONER Exhibit P4 THE TRUE PHOTOSTAT COPY OF THE POSSESSION NOTICE DATED 04.06.2022 ISSUED UNDER RULE 8 (1) OF THE SECURITY INTEREST (ENFORCEMENT)RULES 2002 BY THE RESPONDENTS TO THE 3 RD PETITIONER, HIS WIFE, HIS SISTER AND THE 1 ST PETITIONER

Exhibit P5 TRUE PHOTOSTAT COPY OF THE LAWYER NOTICE DATED 01.06.2022 WITH REFERENCE NO. 50/2022 CAUSED TO BE ISSUED BY RESPONDENTS TO THE PETITIONERS AND 3 AND OTHERS Exhibit P6 THE TRUE PHOTO COPY OF THE REQUEST LETTER DATED 28.06.2022 SENT BY THE 1 ST PETITIONER TO THE RESPONDENTS WITH POSTAL REGISTRATION RECEIPTS (2 NOS) BOTH DATED 29.06.2022 APPENDED THERETO Exhibit7 THE TRUE PHOTOSTAT COPY OF THE AGREEMENT DT.

09.12.2020 BEARING NO. TCTPA/83/2020-21 BETWEEN 1 ST PETITIONER AND THE KERALA STATE ELECTRICITY BOARD LTD IN RESPECT OF CONSTRUCTION OF 5.5 KM LONG 110KV DC LINE FROM KONNATHADY TO MURICKASSERY, IN IDUKKI DISTRICT UNDER THE TRANSMISSION CIRCLE THODUPUZHA Exhibit P8 THE TRUE PHOTOSTAT COPY OF THE WORK ORDER DT. 02.02.2022 BEARING NO. 18/EE/TDP/2021-22/ ISSUED TO 1 ST PETITIONER BY THE KERALA STATE ELECTRICITY BOARD LTD IN RESPECT OF EXTENSION OF CONTROL ROOM AT 110KV SUB STATION, VARKALA

Exhibit P9 THE TRUE PHOTOSTAT COPY OF THE WORK ORDER

DT.12.05.2022 BEARING NO. DCE /E/KLM/T5-/07/2022-23 ISSUED TO 1 ST PETITIONER BY THE KERALA STATE ELECTRICITY BOARD LTD IN RESPECT OF WORKS AT VYDYUTHI BHAVANAM BUILDING AT CHATHANOOR Exhibit P10 THE TRUE PHOTOSTAT COPY OF THE LETTER OF ACCEPTANCE AND WORK ASSIGNMENT DT. 31.03.2018 BEARING NO. W496/DCE/CN/III/MDU/16/2017 ISSUED TO THE 1 ST PETITIONER FROM THE OFFICE OF THE DEPUTY CHIEF ENGINEER, CONSTRUCTION, III, MADURAI SOUTHERN ..7.. RAILWAY IN CONNECTION WITH WORKS RELATED TO GAUGE CONVERSION WORKS BETWEEN BHAGAVATHIPURAM AND ARAYANKAVU NEW STATIONS Exhibit P11 THE TRUE PHOTOCOPY OF THE LETTER DT 27.06.2022 ISSUED BY THE 1 ST PETITIONER TO THE CHIEF ENGINEER, LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM, IN RESPECT OF THE DELAY IN PAYMENT OF PALAKKAD MUNICIPALITY'S WORK, ALONG WITH THE POSTAL REGISTRATION RECEIPT APPENDED ..8..

APPENDIX OF WP(C) 41626/2022 PETITIONER EXHIBITS Exhibit -P1 TRUE COPY OF THE LOAN SANCTION LETTER ISSUED BY THE RESPONDENT BANK DATED 25.02.2021 Exhibit-P2 TRUE COPY OF THE DEMAND NOTICE ISSUED TO THE PETITIONER WITH COPY TO THE GUARANTORS DATED 05.04.2022 Exhibit-P3 TRUE COPY OF THE JUDGMENT IN W.P(C) NO. 34449/2022 OF THE HON'BLE HIGH COURT OF KERALA DATED 04.11.2022

Exhibit-P4 TUE COPY OF THE POSSESSION NOTICE DATED 15.06.2022
Exhibit-P5 TRUE COPY OF THE INTERIM ORDER IN W.P(C) NO. 24.08.2022
Exhibit-P6 TRUE COPY OF THE STATEMENT OF ACCOUNT OF CC ACCOUNT
OF THE PETITIONERS FOR THE PERIOD FROM 01.04.2022 TO 14.12.2022
Exhibit-P7 TRUE COPY OF THE SALE NOTICE DATED 10.11.2022 Exhibit-P8
TRUE COPY OF THE REQUEST SUBMITTED BY THE 1ST

PETITIONER FOR ISSUING BANK GUARANTEE AND SOLVENCY
CERTIFICATE IN FAVOUR OF THE 1ST PETITIONER DATED 16.12.2022
RESPONDENTS' EXHIBITS:NIL TRUE COPY P.A.TO JUDGE

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