Shafeek.a vs the Branch Manager

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SooperKanoon Citation : sooperkanoon.com/1409708

Court : Kerala

Decided On : Dec-01-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/40319/2023

Appellant : Shafeek.a

Respondent : The Branch Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA, 1945 WP(C) NO. 40319 OF 2023 PETITIONERS: 1 SHAFEEK.A AGED 36 YEARS S/O.ASSANAR.M. RESIDING AT OLD CHANTHAPPURA VADAKKANCHERY MBR, VADAKKANCHERY P.O. PALAKKAD, PIN - 678683 2 ASSANAR AGED 58 YEARS S/O.MOHAMMED KHANI RESIDING AT OLD CHANTHAPPURA VADAKKANCHERY MBR, VADAKKANCHERY P.O. PALAKKAD, PIN - 678683 BY ADV SURAJ.S RESPONDENTS:

1 THE BRANCH MANAGER LIC HOUSING FINANCE LTD AREA OFFICE, 2ND FLOOR, MANNIL ARCADE OPP.LIC OF INDIA, BRNACH 1 SHORNUR ROAD, PALAKKAD, PIN - 678014 2 THE AUTHORIZED OFFICER ERNAKULAM BRACH OFFICE, LIC HOUSING FINANCE LTD 9TH FLOOR, LIC BUILDING M G ROAD, ERNAKULAM, PIN - 682011 BY ADVS. ASP.KURUP SADCHITH.P.KURUP(K/1419/2002) C.P.ANIL RAJ(K/872/2007) SIVA SURESH(K/2688/2022) RESHMA RAJ(K/1150/2021)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

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

2. The 1st respondent paid 15,50,000/- to the 1st

petitioner as Housing Loan in the year 2017 and 8,75,000/- to the 2nd petitioner as Housing Loan in the year 2019. 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 installments promptly late due to unforeseen reasons. The repayment of

loans fell into arrears. It happened due to reasons beyond the control of the petitioners.

3. Though the petitioners requested the respondents

to permit the petitioners to repay the overdue amounts in easy monthly installments, the respondents 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.P2 notice invoking Section 13(2) of the Securitisation and Reconstruction of Financial Assets and 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 installments. 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 respondents and denied all the statements made by the petitioners. On behalf of the respondents, it is submitted that the loan was given to the petitioners in the year 2017 and

2019. The petitioners committed default in repaying the loans.

6. The respondents repeatedly reminded the

petitioners and required them to clear the dues. The petitioner deliberately omitted to do so. In the circumstances, the respondents 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.P2 notice was issued in these circumstances. The petitioners have not

advanced any legal reasons to thwart the coercive proceedings initiated by the respondents.

7. The Standing Counsel, however, submitted that if

the petitioners are 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 respondents from the petitioners as on 01.12.2023 is 27,22,327/- and the overdue amount as on 01.12.2023 is 3,06,069/-.

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

9. The specific case of the petitioners is that the

petitioners have been making the repayment and maintaining the loan account initially. The default in repayment of the loans occurred lately due to reasons beyond the control of the petitioners. The petitioners have provided substantial security which will safeguard the interest of the respondents.

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 overdue

amount of 3,06,069/- in seven consecutive and equal monthly installments along with accruing interest and other administrative charges, if any. First of such installments shall be paid on or before 01.01.2024.

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

(iii) The petitioners shall also pay current EMIs along with the aforesaid payments.

(iv) If the petitioners make payments as directed above, coercive proceedings, if any, against the petitioners shall stand deferred. Sd/- N.NAGARESH JUDGE hmh APPENDIX OF WP(C) 40319/2023 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE JUDGMENT DATED 26.07.2022 IN W.P.(C).NO.19584 OF 2022 Exhibit P2 A TRUE COPY OF THE DEMAND NOTICE DATED 06.10.2023 ISSUED BY THE RESPONDENTS UNDER SEC.13(2) SARFAESI ACT, 2002