

Babu Michael vs the Branch Manager

Babu Michael vs the Branch Manager

SooperKanoon Citation : sooperkanoon.com/1411353

Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/42645/2022

Appellant : Babu Michael

Respondent : The 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. 42645 OF 2022 PETITIONERS: 1 BABU MICHAEL AGED
52 YEARS S/O. MICHEAL, KULATHINAL HOUSE, ARANGU P.O.,
KANNUR DISTRICT, PIN - 670582 2 SUJA BABU AGED 45 YEARS
W/O. BABU MICHEAL, KULATHINAL HOUSE, ARANGU P.O.,
KANNUR DISTRICT, PIN - 670582 BY ADV P.T.ABHILASH
RESPONDENTS: 1 THE BRANCH MANAGER HDFC LTD., KANNUR
BRANCH., 1ST FLOOR, HIGHWAY ARCADE, HIGHWAY ARCADE,
THANA, COLLECTORATE P.O., KANNUR, PIN - 670002 2 THE
AUTHORISED OFFICER HDFC, HDFC HOUSE, POST BAG NO. 1667,

RAVIPURAM JUNCTION, M.G. ROAD, KOCHI, PIN - 682015 BY ADVS. S.AMBILY K.K.CHANDRAN PILLAI (SR.)(C-41) LAKSHMI ANIL(K/002184/2022) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 03rd day of January, 2023

The petitioners availed a home equity loan from the respondent financial institution and committed default in repayment. It is not is dispute that this is the fourth writ petition at the instance of the petitioner challenging the proceedings initiated against the petitioners under the provisions of the SARFAESI Act, 2002.

2. Learned counsel appearing for the petitioners

submits that the 1st petitioner, who is the only earning member of the family is an auto driver by profession. It is submitted that though this Court has granted indulgence of repayment of the over due amount in instalments, the petitioners was not able to comply with the terms of those judgments. It is submitted that the petitioners may be given one last final opportunity to settle the liability by paying the

amount due in instalments.

3. Learned counsel appearing for the respondent

bank submits that in the light of the earlier judgments of this Court in the year 2018 and 2019 where the petitioners have given the liberty to repaying the then overdue amount in instalments, the petitioners are not entitled to any further relief from this Court. However, she submits that if the petitioners are willing to clear the entire outstanding amount of

Rs.11,30,266/- (as on today) in instalments, the respondent bank has no objection to the same.

4. Learned counsel appearing for the petitioners submits that the petitioners may be given atleast twenty two (22) instalments to clear the outstanding amount.

5. Learned counsel appearing for the respondent bank submits that the prayer in the writ petition is only for twenty (20) instalments.

6. I have heard the learned counsel for the petitioners as well as the learned Standing Counsel for the respondents.

7. Having regard to the circumstances of the

case and the situation now prevailing, apart from the submissions made as recorded above, I am of the view that the petitioners can be granted an opportunity to repay the outstanding amount in twenty (20) instalments.

6. Accordingly, there will be a direction to the

respondent bank to accept repayment of the entire outstanding amount of Rs.11,30,266/- along with bank charges from the petitioners on the following conditions:

(i) The outstanding amount of Rs.11,30,266/- together with any accrued interest/costs shall be repaid in twenty (20) equated monthly instalments;

(ii) The first instalment shall be paid on or before 03-02-2022 and subsequent instalments shall be paid on or before 03rd day of every succeeding month;

(iii) In the event of default of any one instalment, the respondent bank shall be entitled to proceed in accordance with law;

(iv) In order to enable the petitioners to repay the entire amounts, all coercive proceedings shall be kept in abeyance. The writ petition is disposed of as above.

Sd/- GOPINATH P. JUDGE SKP/03-01 APPENDIX OF WP(C) 42645/2022
PETITIONERS EXHIBITS: EXHIBIT-P1 TRUE COPY OF THE JUDGMENT

DATED 30.01.2018 IN W.P.(C) NO. 2702/2018 OF THE HON'BLE HIGH COURT OF KERALA EXHIBIT-P2 PHOTO COPY OF THE JUDGMENT DATED 14.08.2019 IN W.P.(C) NO. 22012/2019 OF THE HON'BLE HIGH COURT OF KERALA EXHIBIT-P3 TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DATED 08.11.2022 IN M.C. NO. EXHIBIT-P4 TRUE COPY OF THE PRESCRIPTION DATED 20.10.2022 ISSUED BY THE CONSULTANT DOCTOR OF THE 1ST PETITIONER EXHIBIT-P5 TRUE COPY OF THE REPORT WITH RESPECT TO THE 1ST

PETITIONER DATED 23.11.2022 ISSUED BY THE DOCTOR OF KARNATAKA INSTITUTE OF ENDOCRINOLOGY AND RESEARCH, BANNERGHATTA ROAD, BANGALORE EXHIBIT-P6 TRUE COPY OF THE LETTER DATED 12.12.2022 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS EXHIBIT-P7 TRUE COPY OF THE REPRESENTATION DATED 21.12.2022 SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENTS NO. 1 AND 2 RESPONDENTS' EXHIBITS:NIL TRUE COPY P.A. TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com