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Noushad vs the Authorised Officer, Kerala State Co-Operative Bank (Formerly the Thrissur District, Co-Operat

Noushad vs the Authorised Officer, Kerala State Co-Operative Bank (Formerly the Thrissur District, Co-Operat

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Court : Kerala

Decided On : Dec-20-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/42608/2023

Appellant : Noushad

Respondent : The Authorised Officer, Kerala State Co-Operative Bank (Formerly the Thrissur District, Co-Operat

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH WEDNESDAY, THE 20TH DAY OF DECEMBER 2023/29TH AGRAHAYANA, 1945 WP(C) NO. 42608 OF 2023 PETITIONER: NOUSHAD AGED 49 YEARS S/O.KUNJIMON, PANIKKAVEETTIL HOUSE, VALAMUK, ANTHICAD, PUTHENPEEDIKA, THRISSUR DISTRICT, PIN - 680642 BY ADV SUBI K. RESPONDENT: THE AUTHORISED OFFICER, KERALA STATE CO-OPERATIVE BANK (FORMERLY THE THRISSUR DISTRICT, CO-OPERATIVE BANK),

ANTHICAD BRANCH, KANJANY, THRISSUR DISTRICT, PIN - 680612 SRI.P.C. SASIDHARAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

JUDGMENT

Dated this the 20th day of December, 2023 The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Thrissur District Co-operative Bank to the petitioner, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid 16 lakhs to the petitioner as

Mortgage Loan in the year 2018. The petitioner states that though the petitioner made remittances promptly during the initial repayment period of the financial advance, he could not pay the repayment instalments promptly later. The repayment of loan fell into arrears later due to some health

issues and financial difficulties. It happened due to reasons

beyond the control of the petitioner. :3:

3. Though the petitioner requested the Bank to

permit the petitioner to repay the overdue amounts in easy monthly 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.

4. The petitioner states that he is 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 respondent is permitted to continue with

the coercive proceedings and auction the secured assets provided by the petitioner, he 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 petitioner. On behalf of the respondent, it is submitted that the loan was given to the petitioner in the year 2018. The petitioner committed default in repaying the loan. :4:

6. The Bank repeatedly reminded the petitioner and

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

7. The Standing Counsel, however, submitted that if

the petitioner is 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 Bank from the petitioner is 22,84,968/- and the overdue amount as on 20.12.2023 is 11,25,720/-.

:5:

8. I have heard the learned Counsel for the petitioner and the learned Standing Counsel representing the Bank.

9. The specific case of the petitioner is that the

petitioner has been making the repayment and maintaining the loan account initially. The default in repayment of the loan occurred lately due to reasons beyond the control of the petitioner. The petitioner has 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 petitioner to clear off his liability.

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

(i) The petitioner shall remit the overdue amount of 11,25,720/- in 12 equal and consecutive monthly instalments along with accruing interest and other Bank charges, if any. :6:

(ii) First of such instalment shall be paid on or before 22.01.2024.

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

(iv) The petitioner shall also pay current EMIs along with the aforesaid payments.

(v) If the petitioner pays the instalments as directed above, any coercive proceedings against the petitioner shall stand deferred. Sd/- N. NAGARESH JUDGE AMR :7: APPENDIX OF WP(C) 42608/2023 PETITIONER EXHIBITS Exhibit- P1 TRUE COPY OF THE NOTICE DATED 04-12- 2023, ISSUED BY THE ADVOCATE COMMISSIONER

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