Karthyayani., vs the Authorized Officer (Securitization Act)

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SooperKanoon Citation : sooperkanoon.com/1442690

Court : Kerala

Decided On : Apr-05-2022

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : WP(C)/1092/2020

Appellant : Karthyayani.,

Respondent : The Authorized Officer (Securitization Act)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944 PETITIONER/S: KARTHYAYANI., AGED 76 YEARS W/O. LATE THANKAPPAN, MALIKA THURUTH HOUSE, KANIYAMKUNNU, KANJIRAMATTAM, ERNAKULAM 682 315. BY ADVS. R.DIVAKARAN SRI.BINOI GEORGE (CHERUKARA) RESPONDENT/S:

1 THE AUTHORIZED OFFICER (SECURITIZATION ACT) PEOPLES URBAN CO-OPERATIVE BANK LTD. NO. 51, TRIPUNITHURA, ERNAKULAM 682 301. 2 THE PEOPLES URBAN CO-OPERATIVE

BANK, TRIPUNITHURA, ERNAKULAM 682 301. REPRESENTED BY ITS GENERAL MANAGER. 3 JOINT REGISTRAR OF CO-OPERATIVE SOCIEITIES (GENERAL), KAKKANADU, ERNAKULAM 682030. 4 MILMA, ERNAKULAM CO-OPERATIVE MILK PRODUCERS UNION OFFICE, THRIPUNITHURA 682 301. REPRESENTED BY ITS SENIOR MANAGER. 5 MANAGING DIRECTOR, MILMA, ERNAKULAM CO-OPERATIVE MILK PRODUCERS UNION OFFICE, EDAPPALLY 682 024. 6 ADDL. MURALI H/O.LATE ASHA M.T., KATTIKUNNU, NEAR KATTIKUNNU PANACHIKKAL TEMPLE, KATTIKUNNU, POOTHOTTA 682 307. 7 ADDL.SREEKUTTY W/O.RITHIN, AGED 23 YEARS, KATTIKKUNNU, NEAR KATTIKKUNNU PANACHIKKAL TEMPLE, KATTIKKUNNU, POOTHOTTA 682 307.

8 ADDL. SREELAKSHMI D/O.MURALI, AGED 19 YEARS, KATTIKKUNNU, NEAR KATTIKKUNNU PANACHIKKAL TEMPLE, KATTIKKUNNU, POOTHOTTA 682 307.

ADDITIONAL RESPONDENTS R6 TO R8 ARE IMPLEADED AS PER ORDER

DATED 13/2/2020 IN I.A.2/2020 BY ADVS. SRI.DEVAPRASANTH.P.J. SMT.LATHA ANAND SRI.C.N.SAMEER SMT.RASMI NAIR T. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05.04.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

======================= W.P.(C) No.1092 of 2020 -- Dated this the 5th day of April, 2022

JUDGMENT

Petitioner stood as a guarantor for a loan taken by her daughter. Due to default in repayment, proceedings were initiated for enforcement of the security interest. The secured asset is the residential property of the petitioner. Even after a sale notice was issued, petitioners daughter did not take steps to clear the dues. Unfortunately the daughter of the petitioner died on 17-12-2019 and her children are arrayed as respondents 6 to 8 in this writ petition. Amongst the various reliefs claimed, petitioner has also sought for a direction not to release the terminal benefits of her daughter to respondents 6 to 8.

2. According to the petitioner, the terminal benefits of her

deceased daughter is due for payment which would be more than sufficient to cover the liability due to the first respondent. Instead of clearing the liability in the loan availed by late Smt.Asha M.T., respondents 6 to 8 are attempting to collect the terminal benefits from the 4th respondent.

3. A statement was filed by respondents 1 and 2 alleging

that the loan taken by the petitioners daughter was not an educational loan as alleged by the petitioner, but was one to clear the debts of the said daughter as well as the petitioner and the ancesteral property was offered as security for the loan. As per the direction of this Court, a statement has been filed by the 2 nd respondent, pointing out that the loan was taken by Smt.Asha M.T. on 05.07.2016 and the guarantors were Smt.Karthiyayani and Smt.Aneesha. It was further stated that the amount due for regularisation as on 09.03.2022 was Rs.6,20,432/-. It was also stated that the 4th and 5th respondents had submitted that the terminal benefits of Smt.Asha M.T. were already disbursed to the husband and children of the deceased employee of MILMA.

4. In the counter affidavit filed by the 6th respondent it was

stated that the loan was taken and divided equally between petitioner and her two daughters. It was further stated that retiral benefits are payable to the legal heirs and that there was no merit in the writ petition.

5. Having considered the circumstances raised in this case

and after having heard the learned Counsel for the petitioner as well as the respondent, I am of the view that various disputed questions of facts and law are raised in this dispute and this is not a fit case for this Court to consider by invoking the power conferred under Article 226 of the Constitution of India.

6. Though for most of the periods, when this writ petition was

pending, the Tribunal was not functioning, now the Debts Recovery Tribunal has commenced its functioning. The dispute, if it still subsists is a matter, which should be pursued before the Tribunal. Since the proceedings under Section 14 has already been initiated, the said proceedings shall be kept in abeyance for a period of 30 days from today, to enable the petitioner to move the Tribunal for appropriate orders. Petitioner will be at liberty to pursue the statutory remedies available to her in accordance with law. The writ petition is disposed of accordingly. sd/ BECHU KURIAN THOMAS JUDGE jm/ APPENDIX OF WP(C) 1092/2020 PETITIONER EXHIBITS EXHIBIT P1 THE TRUE COPY OF THE DEMAND NOTICE FROM THE 2ND RESPONDENT DAD 06.10.2017. EXHIBIT P2 THE TRUE COPY OF THE SALE NOTICE FROM THE 2ND RESPONDENT DATED 26.02.2019. EXHIBIT P3 THE TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 30.03.2019. EXHIBIT P4 THE TRUE COPY OF THE NOTICE ISSUED BY THE

ADVOCATE COMMISSIONER IN M.C. NO. 660/2019 HONOURABLE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.

EXHIBIT P5 THE TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT. EXHIBIT P6 THE REPRESENTATION SUBMITTED BEFORE THE 3RD RESPONDENT. EXHIBIT P7 THE TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 4TH RESPONDENT. EXHIBIT P8 REPRESENTATION BEFORE THE 5TH RESPONDENT. RESPONDENT EXHIBITS EXHIBIT R6 A TRUE COPY OF THE DEATH CERTIFICATE OF ASHA M.T. ISSUED BY THE EDAKKATTUVAYAL GRAMA PANCHAYATH DATED 3/1/2020