Shafeer U. H. vs the Authorised Manager, the Union Bank of India

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Court : Kerala

Decided On : Jan-25-2022

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : WP(C)/1433/2022

Appellant : Shafeer U. H.

Respondent : The Authorised Manager, the Union Bank of India

Advocate for Pet/Ap. : Smt. Liza P.Cherian

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS TUESDAY, THE 25TH DAY OF JANUARY 2022 / 5TH MAGHA, 1943 WP(C) NO. 1433 OF 2022 PETITIONERS: 1 SHAFEER U. H. AGED 46 YEARS,S/O. HAMSA, UPPOOTTIL HOUSE, MUDICKAL P.O., MARAMBILLI, KUNNATHUNADU, PERUMBAVUR, ERNAKULAM - 683 547. 2 UH HAMZA UPPOOTTIL HOUSE, MUDICKAL P. O., MARAMBILLI, KUNNATHUNADU, PERUMBAVUR, ERNAKULAM - 683 547. BY ADV LIZA P.CHERIAN RESPONDENT: THE AUTHORISED MANAGER, THE UNION BANK OF INDIA ANGAMALY BRANCH,

V/256, NATIONAL HIGHWAY, PB NO.2, ANGAMALY, ERNAKULAM DISTRICT. BY ADVS. SRI.A.S.P.KURUP SRI.SADCHITH.P.KURUP SRI.C.P.ANIL RAJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.01.2022, THE COURT ON 25.01.2022 DELIVERED THE FOLLOWING: W.P.(C) No.1433/22 -:2:-

BECHU KURIAN THOMAS, J.

-- W.P.(C) No.1433 of 2022 --------------------------------------- Dated this the 25th day of January, 2022

JUDGMENT

Petitioners are challenging proceedings initiated against them

under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). Apart from challenging a notice for sale of the secured assets, petitioners have also sought for a direction to consider the settlement proposal submitted by them for clearing the outstanding liability.

2. A loan facility was availed by the petitioners in the year 2014

for conducting their business in Timber and the properties belonging to the petitioners were mortgaged with the erstwhile Corporation Bank, which later merged with the respondent. According to the petitioners, though the repayment was regular until 2018, due to default that occurred thereafter, proceedings were initiated by the bank. Though several factual aspects have been narrated in the writ petition, the same are not being reproduced, as the issue has now boiled down to a sale notice dated 20.01.2022, which is assailed in

W.P.(C) No.1433/22 -:3:- this writ petition.

3. Petitioners have also pleaded that on earlier occasions, they

had approached this Court by filing other writ petitions like W.P.(C) No.9121/2019, W.P.(C) No.22927/2019, W.P.(C) No.23610/2019, W.P.(C) No.29563/2019 and O.P.(DRT) No.197/2019 wherein this Court had granted instalment facilities as well as orders not to dispossess the petitioners or conditional orders. However, since the petitioners could not fully comply with the conditions imposed by this Court, the secured creditor initiated proceedings to dispossess the petitioners. In W.P.(C) No.29563 of 2019 this Court directed the petitioners to approach the Debts Recovery Tribunal (for short, 'the DRT') on deposit of Rs.10,00,000/-. Thereafter, petitioners filed S.A. No.364 of 2019 challenging the measures taken for physical possession of the secured asset. The Tribunal directed the petitioner to deposit Rs.20,00,000/-, as a condition for stay of dispossession. The said order was challenged before this Court in O.P.(DRT) No.197 of 2019. Ext.P1 is the interim order obtained by the first petitioner wherein this Court after noticing that the outstanding amount due from the petitioner was more than Rs.1,30,00,000/-, granted one month's time to deposit Rs.10,00,000/-, out of the

amount ordered by the DRT in its interim order.

4. Petitioners further contended that, even though an amount of Rs.11,00,000/- had been paid by them, based on interim orders passed by this Court, they were served with Ext.P2 notice proposing the sale of secured assets on 20.01.2022. Petitioners contended that due to the surge in pandemic and various other illnesses afflicted on the second petitioner, proceeding with measures under the SARFAESI Act including the sale of the property, at this juncture, would cause great prejudice to them. It was also averred that proceeding to dispossess the petitioners at a time when an application for a one-time settlement submitted by the petitioners on 10.01.2022 is pending consideration, also amounts to harassment. Petitioners further pleaded that a total amount of more than Rs.1.50 crores had been paid by the petitioners from the commencement of the loan, which if borne in mind, ought to enable a favourable consideration of the

one-time settlement proposal submitted. It is also stated that sale notice produced as Ext.P2 itself is illegal since there is a violation of rule 8 of the Security Interest (Enforcement) Rules, 2002.

5. Though the sale was scheduled to 20.01.2022 as per W.P.(C) No.1433/22 -:5:-

Ext.P2, this writ petition was filed only on 13.01.2022 and this Court directed the learned counsel for the respondent to get instructions and posted the matter to 20.01.2022. Upon instructions, respondent submitted that there were no bidders for the sale.

6. Notwithstanding the absence of bidders, a statement was

filed by the respondent contending that the writ petition itself is not maintainable and pointed out that petitioners have been approaching this Court repeatedly, through several writ petitions, and the conditions imposed on all those occasions were not complied with. It was also pleaded that from 2019 onwards, petitioners had been requesting a one-time settlement facility and when the respondent offered such a facility, they failed to pay the amount due to the bank for considering the grant of such a facility. According to the respondents, other than attempting to delay the proceedings, petitioners have no intention to clear any liability. It was also pointed out that, the bank was amenable to consider a one-time settlement facility, if the petitioners were willing to pay the amount equivalent to 20% of the outstanding loan amount before the date of sale. Despite intimating the petitioners the above willingness by a letter, there was no response from the petitioners. The respondent also pointed out

W.P.(C) No.1433/22 -:6:- that even in respect of the order produced as Ext.P1, petitioners had

failed to comply with the conditions imposed in the said judgment

and hence the relief sought for by the petitioners against dispossession, ought not to be considered by this Court.

7. Pursuant to the statement filed by the respondent, an

affidavit has been filed by the first petitioner stating that petitioners have never tried to evade repayment and that due to absence of functioning at the DRT, petitioners have no alternative other than to approach this Court.

8. I have heard Smt. Liza P.Cherian, learned counsel for the petitioners as well as Sri.A.S.P.Kurup and Sri.A.Sachith P. Kurup, learned counsel for the respondent.

9. On a consideration of the pleadings and the submissions of the learned counsel, this Court notices the several writ petitions filed by the petitioners - a reference to them, will be fruitful in arriving at a

conclusion in the instant case.

10. Through W.P.(C) No.2038 of 2019 the second petitioner

herein, who was the proprietor of M/s.Uppoottil Timbers, along with his son approached this Court for regularisation of the loan availed by them from the corporate bank. By judgment dated 25.01.2019, W.P.(C) No.1433/22 -:7:- produced as Annexure R1A, the writ petition was permitted to be withdrawn reserving liberty of the petitioners to approach the bank with a request for one-time settlement and all proceedings were directed to be based upon the decision to be taken by them on the one-time settlement.

11. Almost a month thereafter, the petitioners approached this Court again through W.P.(C) No.6042 of 2019 seeking directions

once again to consider the offer for one-time settlement. After noticing the nature of the proposal submitted by the petitioners, this Court by judgment dated 27.02.2019 directed the petitioners to submit a proper proposal for one-time settlement, that too, on a specific date mentioned in the judgment and directed the bank to take a decision within one week of receipt of such a proposal. Yet again, the petitioners invoked the jurisdiction of this Court through W.P.(C) No.9121 of 2019 assailing the steps initiated by the bank under the SARFAESI Act. On the basis of the offer made by the respondent bank, this Court by judgment dated

26.03.2019 permitted

the petitioners to clear the entire outstanding liability of Rs.1,65,73,473/- as on 06.03.2019 in 10 instalments commencing from 20.04.2019. Though the aforementioned judgment specified W.P.(C) No.1433/22 -:8:-

that the conditions imposed ought to be complied with meticulously and that no further requests for extension or implementation will be granted, the first petitioner herein filed W.P.(C) No.22927 of 2019 before this Court, seeking an opportunity for regularising the loan by paying the overdue amount under the loan account. Noticing that the principles of res judicata will apply in view of the earlier judgment of this Court, the writ petition was closed by judgment dated 29.08.2019, reserving the liberty of the petitioner to approach the bank with a proper representation.

12. Even thereafter, the petitioners moved this Court through

W.P.(C) No.23610 of 2019. Noticing that the attempt of the petitioners was a virtual review of the judgment in W.P.(C) No.9121 of 2019, this Court permitted the said writ petition to be withdrawn, reserving liberty of the petitioners to seek an extension of time or review of the directions in W.P.(C) No.9121 of 2019, however, directed the respondent bank not to dispossess the petitioners for a period of two weeks. Taking a cue from the spirit of the judgment in W.P.(C) No.23610 of 2019, a review petition was filed as R.P. No.869 of 2019 by the petitioners. By order dated 05.09.2019 the following directions were issued:

> That said, the petitioner admits that he has paid only two instalments out of the ten ordered by this Court and that three are now in default, amounting to Rs.51 lakhs. I am, therefore, of the view that if the petitioner pays Rs.51 lakhs along with the next five instalments as per the judgment, he can be given offered such indulgence, because the Bank also does not oppose it. In the afore circumstances, I direct the petitioner to continue to pay the 6th, 7th, 8th, 9th and 10th instalments as per the schedule fixed in the judgment and to pay the defaulted amount

of Rs.51 lakhs in five instalments, each to be paid along with each of the afore mentioned five instalments remaining as per the judgment.

13. Soon thereafter, the first petitioners father filed another

writ petition as W.P.(C) No.29563 of 2019 wherein he sought permission to withdraw the writ petition with liberty to approach the DRT. The said permission was granted by judgment dated 12.11.2019. After the aforesaid judgment, the second petitioner filed S.A. No.364 of 2019. In the application for stay against the proceedings initiated by the bank, an order was passed by the DRT, directing the petitioner to deposit Rs.20,00,000/- on or before 09.12.2019. Immediately thereafter, an original petition was filed as O.P.(DRT) No.197 of 2019, challenging the direction to deposit Rs.20,00,000/- and pleaded for granting further time for depositing the amount directed by the DRT. After considering the contentions

 raised, this Court by judgment dated 11.02.2020, in an attempt to balance the interest of both sides, directed the petitioner to deposit an amount of Rs.10,00,000/- on or before 31.12.2019 as an interim measure.

14. It is after all the above events that Ext.P1 order came to be

issued by this Court in O.P.(DRT) No.197 of 2019. Though the documents mentioned above have not been produced by the petitioners in this writ petition, there are passing references to some of the writ petitions and petitioners selectively choose to produce only the order dated 11.02.2020 in O.P.(DRT) No.197 of 2019, produced as Ext.P1.

15. A perusal of Ext.P1 reveals that the petitioners had failed

to deposit even the entire amount of Rs.10,00,000/- directed by this Court in its order dated 10.12.2019 and had paid only Rs.6,00,000/- by 31.12.2019 and pursuant to an extension of time granted by this Court, they deposited the balance amount of Rs.4,00,000/- on 07.02.2020. However, taking note of the deposit of Rs.10,00,000/- this Court granted one more month's time to deposit the amount of Rs.10,00,000/- being the balance amount ordered by the DRT in S.A. No.364 of 2019.

16. Learned counsel for the respondent had pointed out that

petitioners had failed to comply with the directions in Ext.P1 and in such circumstances, the respondent had no alternative other than to proceed with the sale of the secured assets.

17. The reference, in detail, to the various judgments of this

Court mentioned above, have been done to show that this Court had been repeatedly showing indulgence to the petitioners in granting time to repay the amount. In spite of such indulgence, the petitioners failed to abide by the conditions of deposit as ordered. In such circumstances, this Court is of the view that the steps initiated by the respondent bank for bringing the secured assets for sale is justified and does not warrant any interference. The petitioners' attempt to exploit the repeated leniency shown by this Court cannot deprive the respondent bank of their statutory entitlement to proceed in exercise of the powers under the SARFAESI Act. This Court as well as the Supreme Court have repeatedly held that the jurisdiction to interfere under Article 226 of the Constitution of India against steps initiated by the secured creditor to enforce the security interest should be minimal. (See the decisions in ICICI Bank Ltd. and Others v. Umakanta Mohapatra and Others [(2019) 13 SCC 497] and

 Authorized Officer, State Bank of Travancore and Another v. Mathew K.C [(2018) 3 SCC 85)].

18. Even considering the minimal scope of interference

possible, especially brought about on account of the non-functioning of the DRT, this Court finds it difficult to show further leniency to the petitioners. A time has come, in this case, to put an end to such unwarranted leniency being shown to the petitioners, which no doubt has been causing great prejudice to the respondent, as submitted by the counsel for the respondents. Neither have the petitioners been able to show any merit in the writ petition, nor have they been able to convince the existence of any circumstance that warrants a further leniency to be shown to them.

19. Apart from the above, this Court notices that the petitioners have failed to mention the filing of W.P.(C) No.2038 of 2019 as well as W.P.(C) No.6042 of 2019, which all warrants dismissal of the writ petition.

20. The contention raised by the petitioners on the basis of

violation of rules 8(5), 8(6) and 8(7) of the Security Interest (Enforcement) Rules, 2002 is also without any basis. Learned counsel for the petitioners could not point out any specific nature of W.P.(C) No.1433/22 -:13:- violation. The vague averment in the writ petition that there is a violation of the said rules is insufficient to interfere with the sale notice. In the above view, this writ petition lacks merit and is liable to be dismissed.

21. However, the learned counsel for the respondent, even

after all what has transpired, upon instructions from the respondent, submitted that, they are once again willing to consider the grant of a one time settlement, provided, petitioners abide by the condition of depositing 20% of the outstanding amount due as on today. The learned counsel for the respondent submitted that the total amount due as on date is Rs.1,52,82,153/- and that if the petitioners deposit Rs.30,00,000/- (Rupees Thirty lakhs only) within 10 days from today, and submit a fresh proposal for one time settlement, the respondent bank will consider the proposal with all earnestness in a time bound manner.

22. Even though going by the sequence of events mentioned

earlier, this Court is not inclined to show any further leniency, having regard to the offer made by the respondent that they are willing to consider the grant of one-time settlement, an opportunity can be granted to the petitioners. Accordingly, the respondent bank shall W.P.(C) No.1433/22 -:14:- consider the grant of one time settlement facility to the petitioners, if an amount of Rs.30,00,000/- (Rupees Thirty lakhs only) is deposited by the petitioners on or before 07.02.2022 along with a proposal for a feasible one time settlement. If such a proposal is submitted along with the payment, the same shall be considered by the respondent bank within a period of 15 days thereafter. If the application is not submitted as directed above, the respondent shall be free to proceed with appropriate steps under the SARFAESI Act.

23. To enable compliance with the conditions stipulated above,

coercive proceedings against the petitioners will be kept in abeyance until a decision is taken on the proposal to be submitted. However, if the petitioners fail to abide by the stipulations mentioned earlier, the respondents shall be free to proceed in accordance with law. The writ petition is dismissed subject to the above observations. Sd/- BECHU KURIAN THOMAS JUDGE vps W.P.(C) No.1433/22 -:15:- APPENDIX OF WP(C) 1433/2022 PETITIONER'S/S' EXHIBITS EXHIBIT P1 THE TRUE COPY OF THE INTERIM ORDER IN OPDRT 197/2019. EXHIBIT P2 THE TRUE COPY OF THE SALE NOTICE DATED 20.12.2022.

EXHIBIT P3 THE TRUE COPY OF THE ATTACHMENT ORDER

FROM DRT I. EXHIBIT P4 THE TRUE COPY OF THE OTS ISSUED BY THE RESPONDENT ON 4.3.2021. EXHIBIT P5 THE TRUE COPY OF THE REPRESENTATION ISSUED BY THE PETITIONER DATED 10.1.2022. EXHIBIT P6 THE TRUE COPY OF PAYMENT PROOF OF 54 LAKHS. EXHIBIT P7 THE TRUE COPY OF THE AFFIDAVIT AND MC EXHIBIT P8 THE TRUE COPY OF THE JUDGMENT IN WRIT APPEAL 999/2018. EXHIBIT P9 THE TRUE COPY OF THE INTERIM REPORT FILED BY THE ADVOCATE COMMISSIONER DATED EXHIBIT P10 THE TRUE COPY OF DD NO.005963 TAKEN IN THE NAME OF RESPONDENT BANK DATED EXHIBIT P11 THE TRUE COPY OF THE STATEMENT FILED BY THE RESPONDENT BANK IN WPC 27241/2021 EXHIBIT P12 THE TRUE COPY OF THE OTS DATED ISSUED BY THE PETITIONER EXHIBIT P13 TRUE COPY OF OTS DATED 11/12/2021 FOR AN AMOUNT OF RS.1CRORE W.P.(C) No.1433/22 -:16:- RESPONDENT'S/S' EXHIBITS ANNEXURE R1A THE TRUE COPY OF JUDGMENT DATED 25.1.2019 IN WPC 2038/2019 ANNEXURE R1B THE TRUE COPY OF JUDGMENT DATED 27.2.2019 IN WPC 6042/2019 ANNEXURE R1C THE TRUE COPY OF JUDGMENT DATED 26.3.2019 IN WPC 9121/2019 ANNEXURE R1D THE TRUE COPY OF JUDGMENT DATED 29.8.2019 IN WPC 22297/2019

ANNEXURE R1E THE TRUE COPY OF JUDGMENT DATED 30.8.2019 IN WPC 23610/2019 ANNEXURE R1F THE TRUE COPY OF JUDGMENT DATED 5.1.2019 IN RP 869/2019 ANNEXURE R1G THE TRUE COPY OF JUDGMENT DATED 12.11.2019 IN WPC 29563/2019 ANNEXURE R1H TRUE COPY OF THE LETTER DATED 6.12.2021 ISSUED TO THE PETITIONER