

Gopakumar K., vs the Chief Manager,

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Court : Kerala

Decided On : Apr-10-2019

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/10762/2019

Appellant : Gopakumar K.,

Respondent : The Chief Manager,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 10TH DAY OF APRIL 2019 / 20TH CHAITHRA, 1941 WP(C).No. 10762 of 2019 PETITIONER: GOPAKUMAR K., AGED 65 YEARS PRESIDENT, KOLLAM CIVIL CONSTRUCTION LABOUR CONTRACT CO-OPERATIVE SOCIETY NO.1353, VILLA DARLING, KAVANADU P.O., KOLLAM. BY ADV. SRI.K.SUBASH CHANDRA BOSE RESPONDENT: 1 THE CHIEF MANAGER, STATE BANK OF INDIA, SAKTHIKULANGARA BRANCH, P.B.NO.1, ALBICO BUILDINGS, SAKTHIKULANGARA P.O., KOLLAM - 691 581. 2 THE AUTHORISED OFFICER, STATE BANK OF INDIA, SAKTHIKULANGARA BRANCH, KOLLAM - 691 581. SRI.JAWAHAR

JOSE-SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.04.2019, ALONG WITH WP(C).10602/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 10TH DAY OF APRIL 2019 / 20TH CHAITHRA, 1941 WP(C).No. 10602 of 2019 PETITIONER: ASHOK KUMAR K. AGED 63 YEARS S/O. KUMARAN, VILLA DARLING NARAYANIYAM, KAVANADU P.O., KOLLAM. BY ADVS. SRI.K.SUBASH CHANDRA BOSE SRI.V.RAJASEKHARAN PILLAI RESPONDENTS: 1 THE CHIEF MANAGER, STATE BANK OF INDIA SAKTHIKULANGARA BRANCH, P.B. NO. 1, ALBICO BUILDINGS, SAKTHIKULANGARA P.O., KOLLAM 691 581. 2 THE AUTHORISED OFFICER, STATE BANK OF INDIA, SAKTHIKULANGARA BRANCH, KOLLAM 691 581. SRI.JAWAHAR JOSE-SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.04.2019, ALONG WITH WP(C).10762/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

I am considering these two writ petitions together since the secured assets involved in these cases are common and consequently, the relief to be granted in one case will certainly depend upon the relief to be granted in the other.

2. W.P.(C) No.10762 of 2019 has been filed by

Shri.Gopakumar, who is stated to be the President of a Society by name Kollam Civil Construction Labour Contract Co-operative Society (hereinafter referred to as Society for short) and says that a loan was availed of by the said Society from the respondent State Bank of India for which he and his wife have offered themselves as guarantors. He concedes that his property has been equitably mortgaged to the Bank as a secured asset; and the limited prayer made by him in this case is that

he be allowed to pay off the total liability in a few installments.

3. W.P.(C) No.10602 of 2019 has been filed by

Shri.Ashok Kumar, who is the brother of Shri.Gopakumar and submits that he has taken two other loans, both Cash Credit facilities with sanctioned limits of Rs.75 lakhs and Rs.50 lakhs respectively and admits that as regards the Cash Credit loan of Rs.75 lakhs, the same property involved

in W.P.(C) No.10762 of 2019, owned by Shri.Gopakumar, has been offered as a secured asset; while the property of their mother, Smt.Yesodha, has been offered as the security for the second loan. The prayer made by the petitioner in this writ petition is also that he be allowed to pay off the entire liability in the aforementioned loan accounts in a few installments.

4. Shri.Jawahar Jose, the learned Standing Counsel

appearing for the respondent-Bank in both these cases, submits that the total outstanding in the account of the Society, involved in W.P.(C) No.10762 of 2019, which is guaranteed by Sri.Gopakumar and his wife, is Rs.27.89

lakhs as on today and that if the petitioner pays a minimum amount of Rs.4 lakhs on or before 10/05/2019, the Bank will permit him to pay off the balance, along with all applicable charges and interest, in eight equal monthly installments commencing from 15/06/2019, so as to enable him to close the said account. He then submits that as regards W.P.(C) No.10602 of 2019 is concerned, the total outstanding in the two loan accounts in the name of Shri.Ashok Kumar is Rs.94.20 lakhs as on today and that if he pays a minimum amount of Rs.9 lakhs on or before

and charges, will be permitted to be paid off by him in 10 equal monthly installments, commencing from 28/06/2019. He, however, adds that the property of Shri.Gopakumar, involved in W.P.(C) No.10762 of 2019, will be released from liability only if Shri.Ashok Kumar also pays off the amounts as above.

5. Shri.K.Subashchandra Bose, the learned counsel

appearing for the petitioners in both these cases, submits that his clients will accept this offer and prays that these writ petitions be ordered on such terms. Resultantly,

(a) W.P.(C) No.10762 of 2019 is ordered,

directing the petitioner therein, Shri.Gopakumar, to pay an amount of Rs.4 lakhs on or before 10/05/2019; in which event, the balance overdue, along with all applicable charges and interest, will be paid by him in eight equal monthly installments commencing from 15/06/2019.

(b) W.P.(C) No.10602 of 2019 is ordered,

directing the petitioner to pay an amount of Rs.9 lakhs on or before 20/05/2019; in which event, the balance of the total outstanding in the two loan accounts of Sri.Ashok Kumar, along with all applicable charges and interest, will be allowed to be paid by the petitioner in 10 equal monthly installments, commencing from 28/06/2019.

6. Needless to say, if the payments as afore are completed by the respective petitioners, the title documents of the equitably mortgaged properties will be

released by the Bank to the mortgagor/s immediately; however, clarifying that unless the liability in his loan accounts are paid off by Shri.Asok Kumar, the property of Sri.Gopakumar cannot be redeemed by him.

7. It goes without saying that if there is any default

in making the payment as directed above, the benefit granted under this judgment would stand vacated and the Bank will be at liberty to recover the entire liability from the petitioners by continuing with the proceedings from the stage it is on this date.

8. I make it clear that the directions in this

judgment are peremptory in nature and that the petitioners

will have to comply with the same meticulously. I caution

the petitioners that no further requests for extension or modification of this judgment will be permitted, save in exceptional circumstances and that if the petitioners fail to comply with the directions herein, they will lose the benefit of this judgment and they will also be foreclosed from challenging the measures/proceedings taken by the Bank under the SARFAESI Act, which are impugned in this writ petition, before any other alternative Forum or Court.

Sd/- DEVAN RAMACHANDRAN JUDGE PV APPENDIX OF WP(C) 10762/2019
PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE LETTER DATED
EXHIBIT P2 TRUE COPY OF THE LETTER RECEIVED FROM THE
RESPONDENT BANK DATED 02/03/2019 BEARING NO.SKLA/SARFAESI/97.
RESPONDENTS' EXHIBITS: NIL APPENDIX OF WP(C) 10602/2019
PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE LETTER
RECEIVED FROM THE RESPONDENT BANK DATED 2.3.2019 BEARING NO.
SKLA/SARFAESI/98. EXHIBIT P2 TRUE COPY OF THE LETTER DATED
2.3.2019 RECEIVED BY THE TARUN ASHOK BEARING NO.
SKLA/SARFAESI/99 RESPONDENTS' EXHIBITS: NIL \\TRUE COPY// PA TO
JUDGE PV

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