

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

MONDAY, THE 31ST JANUARY 2011 / 11TH MAGHA 1932

WP(C).No. 2352 of 2011(T)

PETITIONER(S):

**1. ABDUL RAHOOF P.K, SHAMY GHAR, KANNUR
ROAD, MATTANNUR 670 702.**

**2. MRS.SHAMEENA M.K,
W/O.ABDUL RAHOOF, RESIDING DO..**

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S):

**UNION BANK OF INDIA
REP BY ITS CHIEF MANAGER,(AUTHORISED OFFICER)
KANNUR BRANCH, HAJEE BUILDING, FORT ROAD,KANNUR.**

BY ADV. SRI.A.S.PKURUP

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/01/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

VK

WP(C).No. 2352 of 2011(T)

APPENDIX

PETITIONER'S EXHIBIS

**EXT.P1. COPY OF THE NOTICE ISSUED BY THE RESPONDENT DATED
11.1.2011.**

**EXP2. COPY OF THE WOUND CERTIFICATE ISSUED FROM THE SPECIALITY
HOSPITAL, KANNUR.**

EXT.P3. COPY OF THE RCEIPT

EXT.P3(A). COPY O F THE RECEIPT DATED 1.12.2010

**EXT.P3(B). COPY OF TH RPRESENATIN SUBMITTED BY THE 2ND PETITIONER
BEFORE THE RESPONDENT DATED 18.1.2011.**

RESPONDENT'S EXHIBITS : NIL

/ TRUE COPY /

P.A. TO JUDGE

VK

C.K.ABDUL REHIM, J.

W.P.(C) No.2352 of 2011

Dated this the 31st day of January, 2011

J U D G M E N T

Repayment of a housing loan availed by the petitioners from the respondent Bank during the year 2005, to the tune of Rs.10 lakhs, was defaulted. Consequently the respondent initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the immovable property, which is the secured asset, was proceeded against on issuing Ext.P1 notice intimating steps as contemplated under Section 13(4).

2. According to the petitioners, when the demand notice issued under Section 13(2) was received an amount of Rs.30,000/- was paid towards the arrears and a request was made for permitting regularization of the account by offering payment of the balance in default, within a short time. But the petitioner met with an accident and sustained fracture on his right hand. He was continuing payment for a prolonged period. In spite of that various payments were effected, is the contention. It is contended that the coercive steps are now being pursued without

considering the request for permitting regularization. Hence this writ petition is filed.

3. Learned standing counsel appearing for the respondent Bank submitted that the loan account is in chronic default and even the amount remaining overdue for payment (defaulted amount) is around Rs.1,78,000/-.

4. Considering the effective alternative remedy provided under the statute it may not be justified on the part of this court to interdict. However, learned counsel for petitioners submitted that the repayment period of the loan is for 15 years from the year 2005 onwards. He undertook that the petitioners are not intending to pursue any statutory remedy. On the other hand an appeal is made to permit regularization on the basis of an undertaking made to the effect that the petitioners are relinquishing all challenges against the proceedings now impugned.

5. Eventhough interference on merits is not warranted, I am of the view that the petitioners can be permitted to regularise the account considering the relinquishment made.

6. Therefore the writ petition is disposed of directing the respondent to keep all further steps of recovery in abeyance, subject to condition of the petitioners remitting the entire

amount remaining overdue for payment (defaulted monthly instalments along with interest and expenses if any due) in 3 (three) equal monthly instalments falling due on or before 28.2.2011 and on or before the last day of the succeeding months along with payment of the monthly instalments due for the respective months.

7. If payment of the defaulted amounts is effected and the amount is regularised as directed above, then the respondent shall permit the petitioners to continue payment of future monthly instalments in accordance with the original schedule of repayment.

8. It is made clear that on the event of default in payment of any one of the instalments as stipulated above or any one of the future monthly instalments, the respondent will be at liberty to proceed with further steps and on such event the petitioners will be precluded from raising any subsequent challenge against such proceedings.

C.K.ABDUL REHIM, JUDGE.

okb