

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

**TUESDAY, THE 31ST DAY OF JULY 2012/9TH SRAVANA 1934**

**WP(C).No. 17853 of 2012 (F)**

**MC.513/2011 of CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM**

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**PETITIONER(S):**

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- 1. BABU TITUS,  
KRIPA NIVAS, THENGUVILA, MANAPPURAM,  
MALAYANKEEZHU P.O., THIRUVANANTHAPURAM.**
  - 2. LEELA, W/O.BABU TITUS,  
KRIPA NIVAS, THENGUVILA, MANAPPURAM,  
MALAYANKEEZHU P.O., THIRUVANANTHAPURAM.**

**BY ADV. SRI.B.S.SURESH KUMAR**

**RESPONDENT(S):**

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- 1. GOVERNMENT OF INDIA,  
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FINANCE,  
PARLAMENT BUILDING, NEW DELHI - 110 001.**
  - 2. RESERVE BANK OF INDIA,  
REPRESENTED BY ITS GOVERNOR, BOMBAY,  
MAHARASHTRA - PIN - 480 001.**
  - 3. THE AUTHORISED OFFICER,  
STATE BANK OF INDIA, STRESSED ASSETS RECOVERY BRANCH  
(SARB) LMS COMPOUND, THIRUVANANTHAPURAM - 695 001.**
  - 4. THE BRANCH MANAGER,  
STATE BANK OF INDIA, THAMBANOOR BRANCH - 695 014.**
  - 5. DISTRICT COLLECTOR,  
COLLECTORATE, KUDAPPANAKKUNNU,  
THIRUVANANTHAPURAM - 695 001.**

**R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA**

**BY ADV. SRI. R.S. KALKURA, SC**

**R5 BY SR.GOVERNMENT PLEADER SMT. P.A.REZIYA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 31-07-2012, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**Kss**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

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| <b>EXT.P1</b> | <b>TRUE COPIES OF THE CONTRACTORS REGISTRATION CARD ISSUED TO THE 1ST PETITIONER.</b>    |
| <b>EXT.P2</b> | <b>TRUE COPIES OF THE CONTRACTORS REGISTRATION CARD ISSUED TO THE 2ND PETITIONER.</b>    |
| <b>EXT.P3</b> | <b>TRUE COPY OF THE JUDGEMENT IN WPC.26629/2011.</b>                                     |
| <b>EXT.P4</b> | <b>TRUE COPY OF THE REQUEST DATED 12/6/2012 SUBMITTED BY THE PETITIONERS.</b>            |
| <b>EXT.P5</b> | <b>TRUE COPY OF THE RECEIPT SHOWING PAYMENT OF 4,80/000/- DATED 10/7/2012.</b>           |
| <b>EXT.P6</b> | <b>THE TRUE COPY OF THE NOTICE DATED 21/6/2012 ISSUED BY THE ADVOCATE COMMISSIONER.</b>  |
| <b>EXT.P7</b> | <b>TRUE COPY OF THE JUDGEMENT IN WPC.15180/2012.</b>                                     |
| <b>EXT.P8</b> | <b>THE TRUE COPY OF THE ACCOUNT STATEMENT PERTAINING TO THE ABOVE SAID LOAN ACCOUNT.</b> |

**RESPONDENTS' EXHIBITS:                      N I L**

**/TRUE COPY/**

**P.A.TO JUDGE**

**Kss**



**P.R.RAMACHANDRA MENON, J.**

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**W.P.(c) No. 17853 OF 2012**  
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Dated this the 31<sup>st</sup> day of July , 2012

**JUDGMENT**

The petitioners are constrained to approach this Court by filing this writ petition because of the pressure exerted from 'two' sides. One is in respect of the steps taken by the Bank under the SARFAESI Act towards the liability under a loan transaction, while the other is attributable to the Government and Departmental authorities in not disbursing the amount due to the petitioners under a 'works contract' completed to the satisfaction of all concerned.

2. The sequence of events as narrated in the writ petition shows that, the petitioners, who are contractors had availed a loan of Rs. 10 lakhs from the respondent Bank on the strength of the security created over the property in question. But repayment could not be effected on time as scheduled, under which circumstance, the Bank declared the account as 'NPA' and proceeded with steps under the SARFAESI Act, when the second petitioner approached this Court by filing W.P.(C)No.26629/2011. After hearing both the sides, the said

writ petition was disposed of as per Ext.P3 judgment dated 14/10/2011 permitting the petitioner therein to clear the entire liability by way of ten equal monthly instalments, commencing from 01/11/2011. It is stated that, at that time, the liability was nearly Rs.12 lakhs and the petitioners have satisfied two instalments as specified in the said verdict and thereafter payment could not be effected due to non-realisation of the amount from the Government under the works contract.

3. Meanwhile, the Bank proceeded with further steps, when the petitioners approached this Court by filing W.P.(C)No.15180/2012 seeking for immediate intervention by directing the Government and the authorities concerned to disburse the amount due to the petitioners under the concerned works contract. It was contended that, altogether a sum of nearly Rs. 9 lakhs was lying at the hand of the Government, to be disbursed to the petitioners in respect of the works completed by them and it was submitted that immediate interference was necessary, to have it credited to the loan account with the Bank, in discharge of the liability. It was in the said circumstances, that this Court passed

Ext.P7 judgment directing the concerned respondent - District Collector to effect disbursement of the due amount to the petitioners within three weeks, which period is still to be over.

4. The learned Government Pleader appearing on behalf of the fifth respondent-District Collector submits that, the eligible amount will be disbursed to the petitioners and urgent steps are being taken in this regard.

5. The learned counsel appearing for the respondent Bank submits that, the issue has become final in so far as the Bank is concerned, on passing Ext.P3 judgment, whereby some indulgence was shown and the petitioner therein was permitted to clear the liability by way of instalments, which admittedly has not been cleared in toto. The learned counsel also submits that the Bank was never a party to W.P. (C)No.15180/2012 which culminated in Ext.P7 judgment and as such, it was for the petitioners to have made appropriate arrangements to see that the liability was cleared then and there.

6. During the course of hearing, the learned counsel for the petitioners brought it to the notice of this Court with reference to

Ext.P8 that, the petitioners have remitted a sum of Rs.4.8 lakhs on 10/07/2012 and the balance can only be something around Rs.4.7 lakhs. The submission in this regard is sought to be rebutted by the Bank stating that, much more amount is due by virtue of the interest getting mounted up. This Court, however, does not find it necessary to adjudicate the quantum of the amount liable to be satisfied, in so far the limited grievance projected by the petitioners is in respect of their plight and the pressure exerted by the respondent Bank to have the due amount cleared and the inaction of the governmental authorities in disbursing the amount due to the petitioners under the works contract . It is also brought to the notice of this Court that the physical possession of the property was taken by the Bank on 17/07/2012, which stands taken note of by this Court while Ext.P7 judgment was passed on 20/07/2012. It was accordingly, that appropriate directions were given to the District Collector to effect the disbursement within three weeks. The learned counsel further submits that the petitioners do not have any objection to give authorisation in favour of the Bank to collect the entire amount due to the petitioners from the 5<sup>th</sup> respondent and that

the Bank can appropriate the amount due from the petitioners and only the balance needs to be disbursed to them.

7. In the said circumstances, the petitioners are directed to give an undertaking and authorisation in favour of the Bank to collect the amount from the fifth respondent pursuant to Ext.P7 judgment. It shall be done forthwith. The petitioners shall effect a further payment of Rs. 50,000/- ( Rupees fifty thousand) to the Bank within 'one week' from today, on which event, the possession of the premises shall be restored to the petitioners. This order is being passed in view of the particular facts and circumstances, more so, since substantial amount is stated as due to the petitioners from the Government ,which could be collected and appropriated by the Bank in view of the arrangement now made. After satisfying the amount, if any balance is there, it shall be returned to the petitioners. On the other hand, if any further liability is to be cleared to the Bank, even after appropriating the amount obtained from the 5<sup>th</sup> respondent pursuant to Ext.P7 judgment and the authorisation now being given in favour of the Bank to have it collected, the Bank is free to raise demand to pay the balance amount



and it is for the petitioners to satisfy the same without delay. It is also made clear that if any default is there in this regard, it will be open for the Bank to proceed with recovery steps, in accordance with the relevant provisions of law, from the stage where it stands now.

Writ petition is disposed of.

**P.R.RAMACHANDRA MENON**  
**JUDGE**

SV.

