

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 31ST DAY OF OCTOBER 2016/9TH KARTHIKA, 1938

WP(C).No. 34585 of 2016 (W)

PETITIONER(S):

1. M/S. KOYAS AUTOMOBILES
1/1597 D, MARIDIAN MANSON,
NEAR MALAYALA MANORAMA,
NADAKKAVU, CALICUT-676011.
2. A.P. KOYAKKUTTY, AGED 44 YEARS,
S/O. MUHAMMED KOYA, MANAGING PARTNER,
M/S. KOYA AUTOMOBILES, PADATH HOUSE,
CHALIYAM POST, CALICUT-673302.
3. A.P. MIHIRAJUL HAQUE, AGED 38 YEARS,
S/O. MUHAMMED KOYA, PARTNER,
M/S. KOYA AUTOMOBILES, PADATH HOUSE,
CHALIYAM POST, CALICUT-673302.
4. A.P. THAJUL HAQUE, AGED 38 YEARS,
S/O. MUHAMMED KOYA, PARTNER,
M/S. KOYA AUTOMOBILES, PADATH HOUSE,
CHALIYAM POST, CALICUT-673302.
5. A.P. MOHAMMED RAFI, AGED 36 YEARS,
S/O. MUHAMMED KOYA, PARTNER,
M/S. KOYA AUTOMOBILES, PADATH HOUSE,
CHALIYAM POST, CALICUT-673302.

BY ADVS.SRI.AJEESH S.BRITE
SRI.GEORGE ABRAHAM PACHAYIL
SRI. DILIP K
SRI.P.RAFTHAS

RESPONDENT(S):

1. BANK OF BARODA, MAIN BRANCH,
CITY TOWER, I.G. ROAD,
CALICUT NOW FUNCTIONING AT
HOLIDAY CITY CENTRE, BANK ROAD,
CALICUT, REPRESENTED BY THE
CHIEF MANAGER/AUTHORISED OFFICER, PIN - 673 001.

WP(C).No. 34585 of 2016 (W)

2. THE DEBT RECOVERY TRIBUNAL,
ERNAKULAM.

R1 BY ADV. SRI.K.M.ANEESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 31-10-2016, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

bp

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APPENDIX

PETITIONER(S) ' EXHIBITS

P1: TRUE COPY OF THE NOTICE UNDER SUB SECTION (2) OF
SECTION 13 OF THE SARFAESI ACT 2002 INITIATED
AGAINST THE PETITIONERS ON 13/04/2015

P2: TRUE COPY OF THE COMPLAINT FILED U/S 14 OF THE
SARFAESI ACT 2002 BEFORE THE CHIEF JUDICIAL
MAGISTRATE COURT AT KOZHIKODE ON 01/08/2015

RESPONDENT(S) ' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.M.SHAFIQUE, J

W.P.C.No.34585 of 2016

Dated this the 31st day of October 2016

J U D G M E N T

Petitioner has approached this Court when proceedings had been taken by the Advocate Commissioner to take possession of the secured asset. It is brought to the notice of this Court that the petitioner had approached this Court earlier by filing W.P.C.No.27274/2015 and by judgment dated 27/11/2015, this Court granted instalment facility to the petitioner to discharge the liability.

2. Learned counsel for the petitioner submits that substantial amount had been paid thereafter. However, petitioner was unable to remit the entire amount, as directed and therefore the Bank had proceeded further in the matter.

3. Learned counsel appearing for the respondent Bank submits that after paying the initial amount of Rs.25,00,000/-, the petitioner filed an application seeking modification of the judgment. Though it was allowed, petitioner did not pay any of the instalments and therefore there is no reason why further time should be granted in the matter.

4. Learned counsel for the petitioner submits that there is a chance for settlement and all steps are being taken to settle the entire liability.

5. Having regard to the aforesaid factual situation, I do not think it necessary to keep this writ petition pending. Since an Advocate Commissioner has already been appointed for taking possession of the secured asset and the petitioner is not entitled for any further instalment facility, I am of the view that this writ petition can be disposed of as under:

i) That the Advocate Commissioner shall defer taking possession of the secured asset for a period of one month from today.

ii) In the meantime, it shall be open for the petitioner to settle the entire liability.

iii) If the liability is not settled, as stated above, the Advocate Commissioner shall be entitled to take possession of the secured asset without notice to the petitioner and the Bank shall be entitled to take further proceedings, in accordance with law.

This writ petition is disposed of as above.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr