

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY ,THE 31ST DAY OF JANUARY 2019 / 11TH MAGHA, 1940

WP(C).No. 2276 of 2019

PETITIONER/S:

- 1 SUHARA ASHRAF, AGED 57 YEARS
W/O. MUHAMMED ASHRAF P.A. PUZHANKARAYILATH,
P.O. MATHILAKAM, KODUNGALLOOR - 680685.
- 2 MUHAMMED ASHRAF P.A., AGED 63 YEARS
S/O. ABDU, PUZHANKARAYILATH,
P.O. MATHILAKAM, KODUNGALLOOR - 680685.

BY ADVS.
SRI.SHIRAZ ABDULLA
SRI.M.S.IMTHIYAZ AHAMMED

RESPONDENT/S:

- 1 AUTHORISED OFFICER,
THRISSUR DISTRICT CO-OPERATIVE BANK,
KOVILAKATHUM PADAM, THIRUVAMBADY,
THRISSUR - 680001.
- 2 THRISSUR DISTRICT CO-OPERATIVE BANK,
KOVILAKATHUM PADAM, THIRUVAMBADY,
THRISSUR - 680001.

BY ADV.
SRI.P.C.SASIDHARAN-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Through this writ petition, the petitioners call into question certain proceedings initiated and being pursued by the respondent Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act ('the SARFAESI Act' for brevity).

2. I have heard the learned counsel for the petitioners and the learned counsel for the respondent Bank.

3. As I proceed to consider the reliefs prayed for by the petitioners herein, I am conscious that I am jurisdictionally proscribed from entering into any enquiry or consideration of the legality or otherwise of the orders impugned in this writ petition on account of the imperative statutory provisions and the binding judicial pronouncements, especially that of the Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tondon** ((2010) 8 SCC 110) and followed

recently in **Authorised Officer, SBT v. Mathew** (ILR 2018 (1) Ker. 479). I, therefore, cannot and do not propose to consider any of the legal contentions raised by the petitioners on its merits.

4. However, obviously being aware of this, the learned counsel appearing for the petitioners has prayed that notwithstanding the limitations of jurisdiction as aforementioned, the petitioners may be granted some leniency or latitude in order to enable them to pay off the overdue amounts in installments.

5. I, therefore, enquired with the learned counsel for the Bank as to whether the request on the part of the petitioners can be allowed, especially on account of the fact that the Banks are only interested in recovering and not in maintaining and keep pending litigations and legal proceedings against such recovery. The learned counsel has fairly submitted that the Bank is concerned about recovery at the earliest

and that if the petitioners pay off the dues quickly, it would be to their interest also.

6. In view of the fact that the proceedings initiated by the Bank would consume time to culminate in total recovery and taking into account the financial constraints and burden that have been alleged and pleaded by the petitioners, I am inclined to dispose of this writ petition allowing them an opportunity to pay off the overdue amounts demanded by the Bank.

7. The learned counsel for the Bank at this time submits that the overdues as on **29.01.2019** comes to **Rs.6,71,246/-** and that if the petitioners pay an amount Rs.1,75,000/- on or before 28.03.2019 and the balance in seven equal monthly installments, commencing from 02.05.2019, the account can be regularised by the Bank.

8. The learned counsel for the petitioners says that the petitioners are agreeable to the

above offer made by the Bank and therefore that the writ petition may be ordered granting permission to the petitioners to pay off the amount in the manner as afore.

9. In such circumstances, I direct the petitioner to pay an amount **Rs.1,75,000/-** on or before **28.03.2019**; and if they make this payment, then they will be permitted to pay off the balance, along with applicable charges and interest, in **seven** equal monthly instalments, commencing from **02.05.2019**. They shall also, in addition to this, pay the regular EMIs without fail. If such payment is made by the petitioners, their loan account would stand regularised and they would then be at liberty to service the account as per the terms of the loan sanctioned. 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.

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 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 and impugned in this writ petition before any other alternative Forum or Court.

The writ petition is ordered accordingly.

SD/-

DEVAN RAMACHANDRAN

RR

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- | | |
|------------|---|
| EXHIBIT P1 | A TRUE COPY OF THE PETITION IN CMP
NO.7564/18. |
| EXHIBIT P2 | A TRUE COPY OF THE ORDER IN CMP
NO.7564/18 IN CMP 5397/16, CJM
THRISSUR DTD 12.12.18. |
| EXHIBIT P3 | A TRUE COPY OF THE NOTICE ISSUED BY
THE ADVOCATE COMMISSIONER DTD
21/12/18. |
| EXHIBIT P4 | A TRUE COPY OF THE VALUATION REPORT
OF THE PROPERTY. |
| EXHIBIT P5 | TRUE COPY OF THE CERTIFICATE ISSUED
BY THE VILLAGE OFFICER DTD. 06/03/12. |