

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 28TH DAY OF FEBRUARY 2019 / 9TH PHALGUNA, 1940

WP(C).No. 6151 of 2019

PETITIONER:

T.C.ANIL, ANOOP SADANAM, MULAVANA P.O,
KOLLAM-691503.

BY ADV. SMT.S.MUMTAZ

RESPONDENT:

SUNDARAM BNP PARIBAS HOME FINANCE,
REP.BY THE AUTHORIZED OFFICER,
BNP COMPLEX, 1ST FLOOR, ABOVE SBI NRI BRANCH,
TRIVANDRUM ROAD, POLAYATHODE, KOLLAM-691001.

SRI.VARGHESE C. KURIAKOSE-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Through this writ petition, the petitioner calls into question certain proceedings initiated and being pursued by the respondent Financial Institution 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 petitioner and the learned counsel for the respondent Financial Institution.

3. As I proceed to consider the reliefs prayed for by the petitioner 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 petitioner on its merits.

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

5. I, therefore, enquired with the learned counsel for the Financial Institution as to whether the request on the part of the petitioner 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 petitioner pays off the dues quickly, it would be to their interest also.

6. In view of the fact that the proceedings initiated by the Financial Institution 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 petitioner, I am inclined to dispose of this writ petition allowing him an opportunity to pay off the overdue amounts demanded by the Financial Institution.

7. The learned counsel for the Financial Institution at this time submits that the petitioner can be allowed to pay off the overdue amount of Rs.3,89,137/- as on 28.02.2019 in not more than three instalments commencing from 28.04.2019, provided he pays Rs.2,50,000/- on or before 28.03.2019 and that the account can thus be regularised by the Bank.

8. The learned counsel for the petitioner says that the petitioner is agreeable to the above offer made by the Financial Institution and therefore that the writ petition may be ordered granting permission to the petitioner to pay off the amount in the manner as afore.

9. In such circumstances, I direct the petitioner to pay Rs.2,50,000/- on or before 28.03.2019 and the balance amount, along with applicable charges and interest, in three equal monthly instalments commencing from 28.04.2019. He shall also, in addition to this, pay the regular EMIs without fail. If such payment is made by the petitioner, his loan account would stand regularised and he would then be at liberty to service the account as per the terms of the original loan sanction. 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 Financial Institution will be at liberty to recover the entire liability from the petitioner 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 petitioner will have to comply with the same meticulously. I caution the petitioner that no further requests for extension or modification of this judgment, save in exceptional circumstances, will be permitted and that if the petitioner fails to comply with the directions herein, he will lose the benefit of this judgment and he 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, Judge

tkv

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE STATEMENT OF ACCOUNT

EXT. P2 TRUE COPY OF DEMAND NOTICE PUBLISHED IN THE NEWS PAPER
DATED 29.11.2018

EXT. P3 TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE
BANK THROUGH THE LAWYER DATED 31.12.2018

EXT. P4 TRUE COPY OF THE REPLY DATED 23.01.2018 GIVEN BY THE
RESPONDENT TO THE PETITIONER

EXT. P5 TRUE COPY OF THE REQUEST LETTER DATED 30.01.2019

/TRUE COPY/

P.S. TO JUDGE