

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 31ST DAY OF DECEMBER 2019 / 10TH POUSHA, 1941

WP(C).No.35951 OF 2019(T)

PETITIONER:

MANILAL KARTHIKEYAN,
AGED 44 YEARS
S/O.K.M.KARTHIKEYAN,
KURUPPASSERIL PUTHEN VEEDU, PUNNAKULAM,
K.S.PURAM, KOLLAM DISTRICT, PIN - 690 544.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS:

- 1 THE KERALA STATE CO-OPERATIVE BANK LTD.,
REGIONAL OFFICE, OVER BRIDGE JUNCTION,
THIRUVANANTHAPURAM DISTRICT - 695 001,
REPRESENTED BY ITS MANAGER DIRECTOR.
- 2 THE KERALA STATE CO-OPERATIVE BANK LTD.,
KOLLAM BRANCH - 691 013,
REPRESENTED BY ITS BRANCH MANAGER.
- 3 THE AUTHORISED OFFICER,
THE KERALA STATE CO-OPERATIVE BANK LTD.,
KOLLAM BRANCH - 691 013.

SRI.GILBERT GEORGE CORREYA, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner had availed a business loan from the second respondent bank. However, due to financial distress, the petitioner defaulted in repayment of the loan amount. The bank has initiated proceedings under the SARFAESI Act. The Chief Judicial Magistrate Court, Kollam has appointed a Commissioner to take possession of the property by its order in M.C.No.810/2019. Ext.P1 is the notice issued under Section 8(1) of the Security Interest Rules, 2002. The petitioner seeks to pay off the entire outstanding liability in equated monthly installments.

2. Heard. Sri. Sojan Micheal, the learned counsel for the petitioner, Sri.Gilbert George Correya, the learned Standing Counsel for the respondents.

3. I am conscious of the judicial pronouncements by the Hon'ble Supreme Court in ***Union Bank of India v.***

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Satyawati Tondon [(2010) 8 SCC 110] and that of this Court in *Authorised Officer, State Bank of Travancore v. Mathew K.C.* [ILR 2018 (1) KER 479] that this Court should be slow in interfering with matters under the SARFAESI Act under article 226 of the Constitution of India, in view of the alternate remedy provided under the enactment.

4. Considering the submissions made by the learned counsel for the petitioner that he does not dispute the amount claimed by the respondents under the proceedings initiated against him, but only wants a breathing time to pay off the entire outstanding amounts in instalments to regularize the loan account, notwithstanding the limitation of jurisdiction of this Court as observed in the aforesaid decisions, I entertain this writ petition only for the purpose of granting the petitioner a breathing time to pay off the entire arrears towards the loan account in equated monthly installments.

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5. The learned counsel for the respondents submit that as on today an amount of Rs.7,64,513/- (Rupees seven lakh sixty four thousand five hundred and thirteen only) is due from the petitioner to the respondents. He also submits that he bank is prepared to accept the outstanding amount in twelve equal monthly installments. The learned counsel for the petitioner prays for fifteen monthly installments to pay off the entire outstanding amounts.

6. In view of the fact that the petitioner has volunteered to pay off the entire outstanding amounts in equated monthly installments and that if the petitioner avails the benefit of this judgment it would give a quietus to litigation, I feel that some indulgence and leniency can be shown in favour of the petitioners.

Accordingly, in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India, I dispose of this writ petition as follows:

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- i. The petitioner is directed to pay the over due amount of Rs.7,64,513/- as on today along with the applicable charges and interest in twelve monthly installments commencing from 15.01.2020.
- ii. In addition to the above amount, the petitioner shall also pay the regular equated monthly installments as per the loan agreement and time schedule fixed therein without fail.
- iii. If the petitioner makes the aforesaid payment, the loan account shall be regularised and he would be at liberty to service of the account as per the original terms of the sanctioned loan amount.
- iv. Needless to mention that, if the petitioner commits any default in payment of the amount as directed above, the benefit granted to the petitioner by this judgment would stand vacated and that the bank would be at liberty to resurrect the recovery proceedings and recover the entire liability from the petitioner. It is also make clear that the directions in the judgment are peremptory in nature and the petitioner shall comply with the same without committing

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any default. No further request for extension or modification of the judgment will be permitted unless in exceptional circumstances.

This writ petition is ordered accordingly.

Sd/-
C.S.DIAS
JUDGE

Nkr/31.12.2019

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE NOTICE ISSUED BY THE
3RD RESPONDENT DATED 24/09/2019.

RESPONDENTS' EXHIBITS: NIL