

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA, 1944

OP (DRT) NO. 353 OF 2022

AGAINST THE ORDER/JUDGMENTS 187/2021 OF DEBT RECOVERY

TRIBUNAL, ERNAKULAM

PETITIONER/S:

ABHILASH . N .S
AGED 43 YEARS
S/O. C.K. SASIDHARAN
NEDUMPALLIYIL HOUSE
KANAKKARY PO, KOTTAYAM
, PIN - 686632
BY ADVS.
SADCHITH.P.KURUP
C.P.ANIL RAJ

RESPONDENT/S:

- 1 CANARA BANK
KANAKKARY BRANCH
ARAVINDAM BUILDING
HOSPITAL JUNCTION
KANAKKARY, KOTTAYAM
REPRESENTED BY ITS BRANCH MANAGER
, PIN - 686632
- 2 THE AUTHORISED OFFICER
CANARA BANK, KANAKKARY BRANCH
ARAVINDAM BUILDING
HOSPITAL JUNCTION
KANAKKARY, KOTTAYAM
, PIN - 686632

OTHER PRESENT:

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Adv.Santhosh Peter for respondent.

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-: 2 :-

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON 31.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

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OP(DRT)No.353/2022

Dated this the 31st day of August, 2022

ORDER

This original petition seeks for a direction to consider and dispose of Ext.P9 and Ext.P10 applications filed by the petitioner in SA No.187/2021 on the files of the Debts Recovery Tribunal, Ernakulam, Ext.P9 is an application for stay of all further proceedings initiated under the SARFAESI Act, pursuant to Ext.P8. While Ext.P10 is a petition to advance the stay petition to a near date.

2. According to the petitioner, all the earlier notices issued by the bank for taking possession of the secured assets were contrary to the directions of the Tribunal and the present notice giving 15 days time has been challenged in Ext.P9 before the Debts Recovery Tribunal. However, since the Tribunal has not yet considered the application, and the bank is proceeding to dispossess the petitioner by tomorrow, it was submitted that orders are essential to protect the dispossession of the petitioner from

the secured assets, till the Tribunal considers the stay application.

3. Learned Counsel for the respondent vehemently objected and submitted that the Tribunal had already rejected an application for stay by its order dated 27.04.2022, and therefore, the possibility of the petitioner obtaining an order of stay against the present notice is quite minimal, and therefore, this Court ought not to interfere in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

4. I have perused the order dated 27.04.2022, which is produced as Ext.P6. I have also considered rival the contentions raised by the respective Counsel.

5. On an appreciation of the circumstances, since the petitioner is only seeking a breathing time, to enable the Tribunal to consider his advance petition/stay petition and in order to avoid rendering the said applications infructuous, I am of the view that a minimal time can be granted subject to conditions:

6. Accordingly, there will be a direction to the respondent to defer the proceedings to dispossess the

petitioner for a period of 15 days from today to enable the petitioner to make an attempt before the Tribunal to get his applications Exts.P9 and P10 considered on condition that petitioner deposits an amount of Rs.3,00,000/- (Rupees three lakhs only) on or before, 03.09.2022. If the said amount is deposited, the respondent shall defer the aforementioned proceedings till 15.09.2022. It is clarified that under no circumstances shall any extension of time or extension of the order be granted. It is further clarified that the grant of 15 day's time is not a reflection on the merits of the matter and the Tribunal shall be free to consider Exts.P9 and P10 on its merits, independently.

7. Considering the circumstances pointed out by the learned Counsel for the petitioner, I am of the view that, the apprehension of the petitioner that the Tribunal may not dispose of Exts.P9 and P10 applications within the aforesaid period, is without any basis.

The original petition is disposed of accordingly.

BECHU KURIAN THOMAS
JUDGE

jm/

APPENDIX OF OP (DRT) 353/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF SA NO. 187/2021 DATED 9.8.2021 FILED BY PETITIONER BEFORE DRT 2, ERNAKULAM
Exhibit P2	TRUE COPY OF NOTICE DATED 14.3.2022 ISSUED BY THE ADVOCATE COMMISSIONER
Exhibit P3	TRUE COPY OF AMENDMENT APPLICATION DATED 24.3.2022 FILED IN SA NO. 187/2021 BY THE PETITIONER
Exhibit P4	TRUE COPY OF STAY PETITION I.A. NO. 475/2022 IN SA NO. 187/2021 DATED 24.3.22 FILED BY PETITIONER
Exhibit P5	TRUE COPY OF JUDGMENT DATED 30/03/2022 IN OP (DRT) NO. 253 OF 2022 BY THIS HON'BLE COURT.
Exhibit P6	TRUE COPY OF THE PROCEEDINGS IN SA NO. 187 OF 2021 OBTAINED FROM THE PORTAL OF THE DRT
Exhibit P7	TRUE COPY OF JUDGMENT DATED 27/6/2022 PASSED IN OP DRT 275/2022
Exhibit P8	TRUE COPY OF NOTICE DATED 13.7.2022 ISSUED BY ADVOCATE COMMISSIONER
Exhibit P9	TRUE COPY OF STAY PETITION DATED 30.8.2022 IN SA NO.187/2021 FILED BY THE PETITIONER
Exhibit P10	: TRUE COPY OF ADVANCE PETITION DATED 30.8.2022 IN SA NO. 187/2021 FILED BY THE PETITIONER