IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

OP(Crl.).No. 320 of 2015 (Q)

AGAINST THE ORDER IN CMP 2021/2014 of C.J.M., KOZHIKODE, DATED 16.07.2015.

PETITIONER(S):

1. **BABUMANI, AGED 52 YEARS, S/O.ACHUTHAN, PANAYULLATHIL HOUSE, IRINGAL, KOTTAKKAL, VADAKARA, KOZHIKODE DISTRICT.**

2. **SHEEJA BABUMANI, W/O.BABUMANI, PANAYULLATHIL HOUSE, IRINGAL, KOTTAKKAL, VADAKARA, KOZHIKODE DISTRICT.**

BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU

RESPONDENT(S):

1. **THE FEDERAL BANK LTD., KOZHIKODE BRANCH, PIN-673 001, REPRESENTED BY ITS AUTHORIZED OFFICER, SANTHOSH KUMAR P.K., S/O.LATE R.KRISHNA PANICKER, CHIEF MANAGER, KOZHIKODE BRANCH.**

2. **THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ENRAKULAM, PIN-682 031 FOR THE STATION HOUSE OFFICER, PAYYOLI POLICE STATION, KOZHIKODE DISTRICT.**

R1. BY ADVS. SRI.LAWRENCE D'CUNHA
SRI.K.MADHUSOODANAN
SRI.MATHEW BONSTANE
SRI.T.G.PAUL
SRI.MATHEW JACOB (KUNNATHU)
SRI.K.C.JOY

R2 BY GOVERNMENT PLEADER SMT.SEENA RAMAKRISHNAN

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ss

OP(Crl.).No. 320 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1.TRUE COPY OF THE 13(2) NOTICE ISSUED TO THE 1ST PETITIONER DATED 16/7/2013.

EXT.P2.TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT BEFORE THE CJM, KOZHIKODE, DATED 9/9/2014 AS CMP NO.2021/2014.

EXT.P3.TRUE COPY OF THE ORDER PASSED BY THE CJM, KOZHZIKODE IN CMP 2021/2014 DATED 16/7/2015.

EXT.P4.TRUE COPY OF THE ORDER PASSED BY THE CJM, KOZHZIKODE IN CMP 2021/2014 DATED 21/8/2015.

RESPONDENT(S)' EXHIBITS: NIL

//True Copy//

P.A. to Judge

ss

K. RAMAKRISHNAN, J.

O.P. (Crl.) No.320 of 2015

Dated this the 11th day of November, 2015

JUDGMENT

This is an application filed by the petitioners who are the debtors and counter petitioners in the lower court challenging the order passed by the Chief Judicial Magistrate under Section 14 of the SARFEASI Act under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioners are husband and wife and first petitioner had availed two housing loans from the first respondent bank for repair and construction of two residential houses as early as on 24.03.2010 with second petitioner as surety and the properties were given as security. Some amounts have been paid and due to some financial crisis, they could not repay the amount. The first respondent sent Ext.P1 notice under Section 13(2) of the Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called the SARFAESI Act), demanding payment of the amount. Since first petitioner was hospitalized, he could not respond the notice and they were not able to raise the amount and pay the amount also. So the first respondent filed Ext.P2 petition as Crl.M.P.No.2021/2014 under Section 14 of the said Act for appointing a Commissioner to take possession of the property and as per Ext.P3 order, a Commissioner has been appointed. Since the house was closed, he could not deliver possession and commissioner applied for permission to break open the lock and Ext.P4 order was passed by the learned magistrate. The application is not in conformity with the Amendment Act, as no affidavit required to be filed along with the petition has been filed and as such court below should not have entertained the application for want of affidavit to be filed along with the petition as per the amended provision. Hence the petition.

3. Respondent appeared and opposed the

application.

4. When the application came up for hearing today, the counsel for the petitioner submitted that the first respondent filed a counter along with the affidavit said to have been filed along with petition and copy of the same has been produced. The petition was filed since such an affidavit was not received by the petitioner. Since now they have produced the affidavit, the counsel submitted that, the petitioners wants only time for payment of the amount. The counsel submitted that if 7 months time is granted, they will be able to clear the amount. But standing counsel appearing for the first respondent submitted that, the loan is of the year 2010 and they did not respond to the notice issued under Section 13(2) of the Act and it is only an attempt to prolong the matter that this petition has been filed.

5. The only ground alleged in the petition was that no affidavit required to be filed along with the petition as per Section 14 has been filed which is mandatory. But

now the counsel for the petitioner conceded that such an affidavit has been filed and wanted only time for payment of the amount. Considering the circumstances mentioned in the petition that the first petitioner was suffering from tuberculosis and undergoing treatment for the same and also it is housing a loan that has been taken, this court feels that some breathing time can be granted to the petitioners to pay the amount. If the amount is paid within the time specified by this court, then the bank can take steps to withdraw the proceedings. If the amount is not paid, then the bank is at liberty to proceed with the proceedings initiated from the stage at which this has been now pending before the Chief Judicial Magistrate Court. Further the petitioner shall file an affidavit before the Chief Judicial Magistrate Court, that if they did not pay the amount within the time specified by this court, they will surrender the property to the bank without any objection. So the petition can be disposed of as follows:

(i) The petitioners are granted six months time from today to clear the entire arrears due from them under the two housing loans taken by them from the first respondent in two equal instalments. The first instalment will have to be paid on or before 11.02.2016 and the balance amount will have to be paid within three months from that day namely, on or before 13.05.2016.

(ii) The petitioners are also directed to file an affidavit before the Chief Judicial Magistrate Court, Kozhikode in Crl.M.P.2021/2014 within two weeks from today, that they will remit the amount within the time as directed by this court or in case they commit default of payment of the amount, they will surrender possession of the property to the commissioner without any objection. If the affidavit is not filed within two weeks, then the Chief Judicial Magistrate is at liberty to proceed with the proceedings under the 'SARFAESI' Act and take possession of the property and hand over possession of the property to the first respondent in accordance with law.

(iii) If the affidavit is filed by the petitioners as directed, then court below is directed to keep the proceedings in abeyance for a period of six months and if the petitioner commits default, even payment of the first instalment as directed, then court below is at liberty to proceed with the proceedings on making an application by the bank intimating the default committed by the petitioners.

(iv) If the petitioners approaches the first respondent bank for one time settlement, the first respondent bank is directed to consider and pass appropriate orders in accordance with law, if it is legally permissible within the norms of the Reserve Bank of India.

With the above direction and observation the petition is disposed of. Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. Ramakrishnan, Judge

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P.A. to Judge

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