

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

OP (DRT).No. 27 of 2015 (O)

AIR. 86/2014 OF DEBT RECOVERY APPELLATE TRIBUNAL, CHENNAI.

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PETITIONER(S):

- 1. M/S.KUNNATHAN INDUSTRIES,
BUILDING NO.PMC -XXI/133-B, ROYANPURAM,
PERUMBAVOOR, ERNAKULAM DISTRICT,
REPRESENTED BY ITS PROPRIETOR MR. SALIM K.S .**
- 2. MR. SALIM K.S., S/O.SAINUDHIN,
KUNNATHAN HOUSE, ROYANPURAM P.O.,
PERUMBAVOOR -683 543.**
- 3. MRS.SAFIA SALIM, W/O. SALIM K.S.,
KUNNATHAN HOUSE, ROYANPURAM P.O.,
PERUMBAVOOR -683 543.**

**BY ADVS.SRI.PRAVEEN K. JOY,
SRI.T.A.JOY.**

RESPONDENT(S):

- 1. THE MANAGER, UNION BANK OF INDIA,
KOOVAPADY BRANCH, KOOVAPADY P.O.,
PERUMBAVOOR- 683 544.**
- 2. AUTHORISED OFFICER,
UNION BANK OF INDIA, NODAL REGIONAL OFFICE,
ERNAKULAM, UNION BANK BHAVAN, 2ND FLOOR,
M.G ROAD, ERNAKULAM- 682 035.**

BY ADV. SRI.A.S.P.KURUP, SC, UBI.

**THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION
ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 THE TRUE PHOTOCOPY OF THE JUDGMENT DATED 27-05-2014 IN OP(DRT) 35/2014 OF THIS HONOURABLE COURT.
- EXHIBIT P2 THE TRUE PHOTOCOPY OF THE INTERIM ORDER DATED 07-03-2014 IN OP(DRT) 35/2014 OF THIS HON'BLE COURT.
- EXHIBIT P3 THE TRUE PHOTOCOPY OF THE RECEIPT DATED 31-03-2014 OF THE RESPONDENT BANK.
- EXHIBIT P4 THE TRUE COPY OF THE APPEAL MEMORANDUM IN AIR 86/2014 OF DEBT RECOVERY APPELLATE TRIBUNAL, CHENNAI.
- EXHIBIT P5 TRUE COPY OF THE STAY PETITION AS IA. 732/14 IN A.I.R 86/14 BEFORE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI.
- EXHIBIT P6 THE TRUE COPY OF THE ORDER DATED 29-11-2013 IN S.A. 787/13 OF DEBTS RECOVERY TRIBUNAL AT ERNAKULAM.
- EXHIBIT P7 TRUE PHOTOCOPY OF THE LETTER DATED 07-05-2013 OF THE RESPONDENT BANK.
- EXHIBIT P8 THE COPY OF THE RELEVANT PAGE OF NEWS IN MATHRUBHOOMI DAILY.
- EXHIBIT P9 THE TRUE COPY PHOTOCOPY OF THE PROCEEDINGS DATED 04-08-2014 IN AIR 86/14 OF DEBT RECOVERY APPELLANT TRIBUNAL.
- EXHIBIT P10 THE STATEMENT DATED 28/01/2015.
- EXHIBIT P11 TRUE COPY OF THE NOTICE OF ADVOCATE COMMISSIONER IN C.M.P. 5651/13 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.
- EXHIBIT P12 THE TRUE PHOTOCOPY OF THE RECEIPT DATED 24-02-2015 FOR RS. 5 LAKHS.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

O.P.(DRT) No.27 of 2015 (O)

Dated this the 27th day of February, 2015

JUDGMENT

The challenge in this original petition is against Ext.P9 order passed by the Debt Recovery Appellate Tribunal in I.A.No.731 of 2014 in AIR (SA) No.86 of 2014. The said order is essentially one that has been passed by the Appellate Tribunal in exercise of its powers under Section 18 of the SARFAESI Act, 2002. By Ext.P9 order, the petitioner has been directed to deposit a sum of Rs.35,22,388/- before the Tribunal, on or before 31.10.2014, as a condition for entertaining the appeal on merits.

2. In the writ petition, it is stated that, out of the total amount of Rs.35,22,388/- directed by the Tribunal, the petitioner has already effected payment of Rs.29,90,000/- to the respondent Bank. This fact is not disputed by the learned counsel for the respondent Bank.

3. The limited prayer of the petitioner in this original petition is for the grant of some time to deposit the balance amount of Rs.5,32,388/- with the respondent Bank, so as to maintain the appeal before the Debt Recovery Appellate Tribunal, Chennai.

4. I have heard Sri.Praveen K.Joy, the learned counsel for the

petitioners and Sri.ASP Kurup, learned Standing counsel for the respondent Bank.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar and the plea of financial hardship urged on behalf of the petitioner, I dispose the writ petition with the following directions :

(i) If the petitioner pays the balance amount of Rs. 5,32,388/- to the respondent Bank on or before 20.03.2015, then, the said payment together with the payments already made to the respondent Bank, pursuant to Ext.P9 order of the Appellate Tribunal, shall be treated as compliance with the directions in Ext.P9 order and the Debt Recovery Tribunal Appellate Tribunal, Chennai will proceed to consider and dispose the appeal filed by the petitioner on merits.

(ii) It is made clear that, if the petitioner defaults in the aforementioned condition, then, he will lose the benefit of this judgment and it will be open to the respondents to proceed against the petitioner for recovery of the loan amounts.

(iii) The Debt Recovery Tribunal Appellate Tribunal, Chennai is directed to treat the payments effected by the petitioner to the respondent Bank, consequent to Ext.P9 order passed by it, as payments made to the Tribunal for the purposes of maintaining the appeal before it.

I make it clear that, recovery proceedings if any, initiated against the petitioner, pursuant to Ext.P11, shall be kept in abeyance in the meanwhile.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/02/03/