IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

OP (DRT).No. 138 of 2015 (O)

SA 346/2015 OF DEBT RECOVERY TRIBUNAL, ERNAKULAM DATED 05-10-2015

PETITIONER(S)/APPLICANT:

SONIA MARIA LOBO, AGED 42 YEARS, W/O.GLADSTONE LOPES, KUNNUMPURATH HOUSE, DUTCH SQUARE, DUTCH LANE, BAZAR P.O., ALAPPUZHA-688012, REPRESENTED BY HER BROTHER AND THE POWER ATTORNEY HOLDER JOSEPH SHAYNE LOBO, S/O.ANTONY LOBO, AGED 38 YEARS, KUNNUMPURATH HOUSE, DUTCH SQUARE, DUTCH LANE, BAZAR P.O., ALAPPUZHA-688012.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENT(S)/DEFANDANT:
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1. STATE BANK OF INDIA, RETAIL ASSETS CENTRALIZED PROCESSING CENTRE, 1ST FLOOR, VANKARATH TOWERS, BYE PASS JUNCTION, PALARIVATTOM, ERNAKULAM, KOCHI-682024, REP. BY ITS AUTHORIZED OFFICER.

2. THE DEBT RECOVERY TRIBUNAL, ERNAKULAM (KERALA AND LAKSHADWEEP), 5TH FLOOR, K.S.H.BUILDING PANAMPILLY NAGAR, KOCHI-36, REPRESENTED BY ITS REGISTRAR.

BY SMT.S.AMBILY

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

OP (DRT).No. 138 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF THE ACCOUNT STATEMENT OF THE PETITIONERS HOUSING LOAN ACCOUNT WITH THE DEFENDANT BANK FROM 1/8/10 TILL 25/7/15

P2: COPY OF THE NOTIVE SEND BY THE DEFENDANT TO THE PETITIONER UNDER SECTION 13(2) OF THE SARFAESI ACT DATED 13/2/14

P3: COPY OF THE LETTER DATED 10/3/14 BY THE PETITIONER TO THE R1

P4: COPY OF THE POSSESSION NOTICE ISSUED BY THE BANK DATED 7/8/15

P5: COPY OF THE AUCTION NOTICE DATED 8/8/15

P6: COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSION DATED 21/8/15

P7: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE BANK ON 26/8/15

P8: COPY OF THE MEMORANDUM OF SECURITIZATION APPLICATION FILED AS SA.346/15 ON THE FILES OF DEBT RECOVERY TRIBUNAL, ERNAKULAM,WITHOUT ANNEXURES

P9: COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT DATED 10/9/15 IN SA.346/15 ON THE FILES OF DEBT RECOVESRY TRIBUNAL ERNAKULAM

P10: COPY OF THE ORDER DATED 10/9/15 IN SA.346/15 ON THE FILES OF DEBT RECOVERY TRIBUNAL ERNAKULAM

P11: COPY OF THE APPLICATION FILED FOR ENLARGEMENT OF TIME AS IA.2531/15 IN SA.346/15 ON THE FILES OF DEBT RECOVERY TRIBUNAL ERNAKULAM

P12: COPY OF THE ORDER DATED 5/10/15 IN IA.2531/15 IN SA.346/15 ON THE FILES OF DEBT RECOVERY TRIBUNAL ERNAKULAM.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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O.P.(DRT).No.138 of 2015

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Dated this the 2nd day of November, 2015

J U D G M E N T

In the O.P(DRT), the challenge is against Exts.P10 and P12 orders that were passed by the Debt Recovery Tribunal in S.A.No.346 of 2015 that was preferred by the petitioner challenging the recovery steps initiated by the respondent bank for recovery of defaulted loan amounts. Counsel for the petitioner would submit that the limited prayer before the Debt Recovery tribunal was for a permission to regularise the loan account which had fallen into arrears and the Debt Recovery Tribunal directed a payment of Rs.5 lakhs within 15 days as a condition for keeping in abeyance the recovery steps initiated against the petitioner's property by the respondent bank. It is submitted that the petitioner could not comply with the direction of remitting Rs.5 laks within 15 days, and therefore, the respondent bank proceeded with the auction sale and in Ext.P12 order, that was subsequently passed by the Debt Recovery Tribunal, the fact that the bank has proceeded with the sale up to confirmation is also recorded. In the OP(DRT), the prayer of the petitioner is only for a direction to the respondent bank to permit the petitioner to regularise the loan account by paying the defaulted instalments and to keep in abeyance further proceedings for registering the sale in favour of the auction purchaser.

2. I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondent bank.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, and taking note of the fact that the sale proceedings have since been completed and the sale has also been confirmed in favour of the auction purchaser, the plea of the petitioner for a direction to the respondent bank to accept amounts towards regularisation of the loan account cannot be acceded to at this stage. I feel it would be prudent to relegate the petitioner to the Debt Recovery Tribunal in a challenge against the orders passed by the respondent bank confirming the sale in favour of the auction purchaser. In the said proceedings, it will be open to the petitioner to seek a rescheduling of the loan amount so that he can discharge the liability due to the respondent bank through terms which are less onerous than what is expected from the petitioner as of now. Thus, relegating the petitioner to his alternate remedy of challenging the confirmation of sale in proceedings before the Debt Recovery Tribunal this OP(DRT is dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/02.11.15