

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WA.No. 571 of 2015 () IN WP(C).2998/2015

AGAINST THE JUDGMENT IN WP(C) 2998/2015 of HIGH COURT OF KERALA
DATED 03-02-2015

APPELLANT(S)/RESPONDENTS :-

1. THE AUTHORIZED OFFICER,
THE SOUTH INDIAN BANK LTD., REGIONAL OFFICE, ERNAKULAM
SIB BUILDING, INFOPARK, RAJAGIRI VALLEY P.O.
KAKKANAD, KOCHI-682 039.
2. THE CHIEF MANAGER,
THE SOUTH INDIAN BANK LTD., DOOR NO.39/4165
SHEMA BUILDING, GROUND FLOOR, M.G.ROAD, BRANCH,
ERNAKULAM, KOCHI-682 016.

BY ADVS.SRI.K.K.CHANDRAN PILLAI (SR.)
SRI.K.S.DILIP
SRI.SAJU N.A.
SMT.G.LEKHA
ADV.FLONY P
SMT.S.AMBILY

RESPONDENT(S)/PETITIONER :-

KADAR PILLAI K.S.,
S/O.K.A.SAIDALI, RUKIYA BAGH ROYAL LANE, KADAVANTHARA
ERNAKULAM, PIN-682020
REP. BY HIS POWER OF ATTORNEY HOLDER K.R.SATHEESAN
S/O.T.R.UNNIKRISHNAN, AGED 63 YEARS
RESIDING AT PLOT NO.29, GIRINAGAR, KADAVANTHARA P.O.
KOCHI-682020.

BY SRI.LAL K.JOSEPH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

APPENDIX

Appellants' Exhibits :-

Annexure-1 :- Copy of the letter given by the respondent to the appellant.

Annexure-2 :- Copy of the list of financial position produced by the respondent before the petitioner dated 14.11.2012.

Annexure-3 :- Copy of the list of financial assets dated 13.11.2014 produced by the respondent before the petitioner.

Annexure-4 :- Copy of letter dated 31.1.2015 given to the petitioner by the Bank.

Respondent's Exhibits :- NIL.

//True Copy//

P.A. to Judge

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. No.571 of 2015

Dated this the 10th day of March 2015

J U D G M E N T

Shaffique, J.

This appeal is filed by the respondents in the writ petition challenging the judgment dated 3.2.2015 in W.P.(C) No.2998 of 2015.

2. The writ petition was filed by the respondent herein, who is hereinafter referred to as 'petitioner', seeking for a direction to the respondent Bank to permit the petitioner to regularize the account in a time bound manner and challenging the possession notice issued in terms of Ext.P6.

3. The facts involved in the writ petition would disclose that the petitioner had taken a loan from the respondent Bank and when SARFAESI proceedings were initiated against him for non-payment of the loan, he had approached this Court. The learned Single Judge by the impugned judgment granted instalment facility to the petitioner to repay the balance amount with accrued interest in 8 equal monthly instalments. It was also

-: 2 :-

directed that if any default is committed, the Bank shall be entitled to proceed in accordance with law.

4. Learned counsel appearing for the appellants, impugning the aforesaid judgment, submits that the petitioner is not a person, who is not without any means. They relied upon Annexure 1 to contend that the petitioner is having several business concerns in India as well as abroad and such concession need not have been given in favour of the petitioner. That apart, even if time was granted, the petitioner should have been called upon to remit a substantial amount before 31.3.2015.

5. On the other hand, the learned counsel appearing for the petitioner submits that repayment of the loan was by creating a lien on the rent that was being received by the petitioner. But, after some time the tenants had vacated the premises and therefore, the rent was not available to be adjusted towards the loan. The petitioner is taking earnest efforts to settle the account and as matter stands now, he is in severe financial difficulty. As a result of the same, he sought for time to repay the loan.

6. Having regard to the fact that the learned Single had already exercised discretion to grant eight instalments to pay the outstanding amount with interest and the Bank is entitled to

-: 3 :-

receive two instalments prior to 31.3.2015, we do not think it necessary to interfere with the discretionary jurisdiction exercised by the learned Single Judge.

We do not find any good ground to entertain the writ appeal. The writ appeal is, hence dismissed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE