

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WA.No. 1187 of 2015 () IN WP(C).14991/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 14991/2015 of HIGH COURT OF KERALA
DATED 26-05-2015**

APPELLANT(S)/RESPONDENTS:

- 1. CHIEF MANAGER (AUTHORISED OFFICER)
STATE BANK OF TRAVANCORE, EAST KALLADA
KOLLAM DISTRICT 691001**
- 2. MANAGER
STATE BANK OF TRAVANCORE, EAST KALLADA BRANCH
KOLLAM DISTRICT 691001**

BY ADV. SRI.R.S.KALKURA

RESPONDENT(S)/PETITIONER:

**BIJI B, AGED 38 YEARS
W/O.SATHEESHKUMAR.S., ANIZHAM, VILLIMANGALAM
MUNDROTHURUTHU PO, KOLLAM 691010**

BY SRI.VINOY VARGHESE KALLUMOOTILL

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A.No. 1187 of 2015

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Dated this, the 10th day of June, 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellants. This writ appeal has been filed against the judgment dated 26th of May, 2015 in W.P (C) No. 14991/2015. The writ petition was filed against the proceedings initiated by the Bank to recover a car loan granted to the petitioner. Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘SARFAESI Act’) was issued demanding an amount of ₹1,84,923/-. The writ petition was filed by the petitioner, which was disposed of by the learned Single Judge with the following directions;

“(1) If the petitioner pays the overdue amount within two weeks, the vehicle shall be released to the petitioner and the petitioner shall be permitted to regularise the account and to pay the remaining instalments in accordance with the

agreement.

(2) If the petitioner fails to pay the overdue amount within the time indicated above, the respondent bank is at liberty to proceed against the petitioner in accordance with law.”

2. Learned Single Judge exercised his discretion in directing the petitioner to deposit overdue amount within two weeks on which the vehicle will be released and the petitioner be permitted to regularise the amount and pay remaining instalments in accordance with the agreement. Default clause was also incorporated in the order.

3. Learned counsel for the Bank has come up in the writ appeal contending that this Court in exercise of writ jurisdiction cannot interfere with proceedings initiated by the Bank for recovery of loan. He has relied on the judgments of the Apex Court reported in Delhi Financial Corporation v. B.B.Behel [(1999) 3 SCC 298] and United Bank of India v. Satyawati Tondon and Others [(2010) 8 SCC 110]. The Apex Court in Satyawati’s case (supra) was considering an appeal against the judgment of the

High Court where the High Court has passed an interim order in a writ petition challenging the proceedings under the SARFAESI Act. The proceedings were challenged on the merits before the High Court under SARFAESI Act, whereas the Apex Court noted that there being a statutory remedy provided under Section 17 of SARFAESI Act against any action of the Bank under Section 13(4), High Court ought not have entertained the writ petition. In para 34, following was laid down;

“34. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Art.226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

4. There cannot be any dispute to the proposition laid

down by the Apex Court in the aforesaid judgment. Challenge to the proceedings under SARFAESI Act on merits by a debtor cannot be entertained and the petitioner has to be relegated to file his statutory remedy as provided under SARFAESI Act. But in a case where the debtor comes in the writ petition accepting the liability and without disputing the liability to pay the amount including interest, the Court is not debarred from exercising its jurisdiction by entertaining the writ petition and pass an order which may subserve the interest of justice. In the present case, the learned Single Judge has directed for payment of entire overdue amounts within two weeks which was an amount of ₹38,000/- and more. No challenge or dispute pertaining to the amount due or liability was entertained. The vehicle was already taken possession by the Bank. The Court further directed release of the vehicle on payment of the entire overdues and with a default clause that in the event the petitioner did not comply with any of the direction and committed default, the Bank was at liberty to proceed further

under the SARFAESI Act. The order passed by the Court subserved the ends of justice and in no manner prejudices the right of the Bank to receive the entire amount along with interest.

5. Another judgment of the Apex Court which has been relied on by the learned counsel for the petitioners is Delhi Financial Corporation (supra), which was a case where the Court was considering Section 31 of the State Financial Corporations Act, 1951 and the issue as to whether interest holiday can be granted by the court in exercise of jurisdiction under Art.226 of the Constitution of India. The Apex Court in the said background held that High Court under Art.226 will not be justified in interfering with the terms of the agreement nor can it waive the interest which was liable to be paid by a debtor. Following observations were made in para 15 of the judgment.

“15. Even if it is accepted that the appellant had, in some cases, granted substantial relief to the debtors affected by terrorist activities, it is far beyond the power of the court to compel a creditor to forego part of its claim of interest on the ground of hardship to a debtor.

In financial transactions, such adjustments should be left to the parties to settle the matter in the best interest or exigencies of the business. The appellant is a statutory financial institution which carries on its activities by borrowing amounts so a direction of such a nature will upset its financial equilibrium and land it in a financial crisis making it non-viable. However, on the peculiar facts of this case, the only relief which we deem fit to grant to the respondent during the period from 1-7-1986 to 30-6-1993 is to condone the default in repaying the amount for dual reasons stated hereinbefore. Consequently, interest at the reduced rate of 13.5 per cent per annum would be payable during the said period."

6. The above case is fully inapplicable in the facts of the present case. The present case is one where this Court has neither exercised any jurisdiction by interfering with rate of interest nor has waived the interest or interfered with any clause of the contract. Therefore, the said case is not applicable. Exercise of jurisdiction under Art.226 which is a discretionary remedy has to be judged in the facts of each case. Self limitations

which has been imposed by the court are the limitation which has to be exercised and implied by the court in the facts of each case. We are not persuaded to accept the submission of the learned counsel for the petitioners that exercise of discretion in the facts of the present case by the learned Single Judge was erroneous or against the principles of law as laid down by the Apex Court. We do not find any error in the judgment.

Writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge