IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

W.A.No. 1396 of 2015
IN
WP(C).16243/2015

AGAINST THE JUDGMENT IN WP(C) 16243/2015 of HIGH COURT OF KERALA DATED 16-06-2015

APPELLANTS/PETITIONERS:
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1. ABDUL GAFOOR AGED 73 YEARS
   S/O.ABDUL AZIZ, KANDANCHIRA PALACE, DALI P.O
   KULATHUPUZHA, KOLLAM DISTRICT.

2. SURATH GAFOOR AGED 67 YEARS
   W/O.ABDUL GAFOOR, KANDANCHIRA PALACE, DALI P.O
   KULATHUPUZHA, KOLLAM DISTRICT.

3. SAJEENA.A AGED 44 YEARS
   D/O.ABDUL GAFOOR, KANDANCHIRA PALACE, DALI P.O
   KULATHUPUZHA, KOLLAM DISTRICT.

4. SUDHARMANI AGED 43 YEARS
   D/O.ELSI, THANIVILA PUTHENVEEDU, DALI P.O
   KULATHUPUZHA, KOLLAM DISTRICT.

5. SHEEJA.E.S. AGED 40 YEARS
   D/O.ELSI, THANIVILA PUTHENVEEDU, DALI P.O
   KULATHUPUZHA, KOLLAM DISTRICT.

6. SINDHU.E.S. AGED 37 YEARS
   D/O.ELSI, THANIVILA PUTHENVEEDU, DALI P.O
   KULATHUPUZHA, KOLLAM DISTRICT.

7. SOPHIA.A AGED 40 YEARS
   D/O.NASEEMA BEEBI, KANDANCHIRA HOUSE, DALI P.O
   KULATHUPUZHA, KOLLAM DISTRICT.

8. M.M.SHAFEEK AGED 40 YEARS
   S/O.BASHEER, SHAMANSIL, OR M.M HOUSE
   DALI P.O, KULATHUPUZHA, KOLLAM DISTRICT.

9. ANSAR.H AGED 30 YEARS
S/O.HIDROS, CHARUVILA PUTHENVEEDU, CHOZHIKODE P.O
KULATHUPUZHA, KOLLAM DISTRICT.

BY ADV. SRI.R.S.SARAT

RESPONDENTS/RESPONDENTS:
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1. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
OFFICE OF THE ASST.REGISTRAR OF CO-OPERATIVE SOCIETIES
PATHANAPURAM, PUNALUR, KOLLAM DISTRICT.

2. KULATHUPUZHA SERVICE CO-OPERATIVE BANK, REG.NO.1867
KULATHUPUZHA, KOLLAM DISTRICT.

3. SPECIAL ARBITRATOR CUM SALE OFFICER
ELAMBAL SUB GROUP
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
PUNALUR, KOLLAM DISTRICT.

R1 & 3 BY SR. GOVERNMENT PLEADER SRI JOSEPH GEORGE
R2 BY SRI.MANOJ RAMASWAMY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

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W.A. No. 1396 of 2015

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Dated this the 3rd day of July, 2015

JUDGMENT

P.R. Ramachandra Menon,J.

The appellants are the borrowers, who had availed some financial assistance from the second respondent Co-operative Bank creating mortgage in respect of the property belonging to the first appellant. As a matter of fact, separate loans of Rs. Two lakhs each were availed by the appellants and property of the first appellant, who was a former President of the second respondent Bank was mortgaged as security, which was accepted by the second respondent

Bank. In the course of time, the appellants, because of some compelling circumstances, could not satisfy the timely instalments, when the Bank proceeded with steps for realisation of the due amount. Ultimately, the matter came up for consideration before this Court by way of W.P.(C) No.16243 of 2015, when the property belonging to the first appellant was proceeded against, to be sold by auction. The appellants submitted before the learned single Judge that they were ready to satisfy the liability and the prayer was mainly to give them the benefit of instalments. They also sought for waiver of penal interest.

2. A counter affidavit was filed from the part of the second respondent Bank pointing out the loan accounts. Outstanding liability, due from the appellants, has been given in paragraph 6 of the counter affidavit. However, the learned single Judge observed that the power vested with this Court under Article 226 of the Constitution of India could not be invoked for waiver of the loan or for

rescheduling the same. Interference was declined and the writ petition was dismissed, which, in turn, is sought to be intercepted by way of filing the present appeal.

3. Heard the learned counsel for the appellants, the learned Senior Government Pleader for respondents 1 and 3 and the learned counsel for the second respondent Bank.

4. During the course of hearing, the learned counsel for the appellants submits that, eventhough the appellants have sought for waiver of penal interest, they would confine the relief only to permit them to clear the entire liability by way of reasonable instalments, stating that no dispute is intended to be pursued with regard to the figures given by the respondent Bank in the counter affidavit filed by them. It is also stated that the Government had declared a one time settlement scheme, namely "Ashwas 2015", but the appellants, because of their pressing adverse circumstances could not avail the benefit of the said Scheme, as they were not in a position to discharge the entire liability as a one

time measure, as envisaged under the Scheme. It is in the said circumstances, that they are seeking for the benefit of instalments, submits the learned counsel.

5. After hearing both the sides, this Court finds that the liability can be permitted to be liquidated in a phased manner and no serious prejudice will be caused to the second respondent Bank, more so, since it is well secured by immovable property of requisite value. Considering the particular facts and circumstances, the appellants are permitted to clear the entire outstanding liability by way of 'eight' equal monthly instalments. The first instalment will be satisfied on or before 20th of July, 2015, followed by similar instalments to be effected on or before 20th of every succeeding month. It is made clear that, if the appellants commit default in making the instalments as aforesaid, the second respondent Bank will be at liberty to proceed with further steps for realisation of the entire amount, pursuing such steps, from the stage where it stands now. Subject to

this, the recovery proceedings shall be kept in abeyance for the time being.

The judgment passed by the learned single Judge is modified accordingly, and the writ appeal is disposed of.

Sd/-

P.R. RAMACHANDRA MENON
JUDGE

Sd/-

BABU MATHEW P. JOSEPH
JUDGE

ks.

True copy

P.S. (Hr.Gr.)To Judge