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

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WA.No. 1502 of 2015
IN WP(C).9638/2014

AGAINST THE JUDGMENT IN WP(C) 9638/2014 of HIGH COURT OF KERALA
DATED 11-12-2014

APPELLANT/PETITIONER:

LEELA O.
W/O LATE N. SADASIVAN NADAR,
R/A S.L. SADANAM, VENNIYOOR WARD,
VENGANOOR PANCHAYAT, VANGANOOR
TRIVANDRUM.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS/RESPONDENTS:
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1. TRIVANDRUM CO-OPERATIVE AGRICULTURAL
AND RURAL DEVELOPMENT BANK LTD.,
NO.T-170, HOUSING BOARD JUNCTION,
TRIVANDRUM - 695001, REP. BY ITS SECRETARY.

2. TRIVANDRUM CO-OPERATIVE AGRICULTURAL
AND RURAL DEVELOPMENT BANK LTD.,
VELLANADU BRANCH, VELLANADU P.O.,
TRIVANDRUM - 695 001 REP. BY ITS SECRETARY.

3. THE SECRETARY, TRIVANDRUM CO-OPERATIVE AGRICULTURAL
AND RURAL DEVELOPMENT BANK LTD.
NO.T-170, HOUSING BOARD JUNCTION,
TRIVANDRUM - 695001.

4. SPECIAL SALES OFFICER,
TRIVANDRUM CO-OPERATIVE AGRICULTURAL
AND RURAL DEVELOPMENT BANK LTD.,
NO.T-170, HOUSING BOARD JUNCTION,
TRIVANDRUM - 695 001.

BY SR. GOVERNMENT PLEADER SRI. JOSEPH GEORGE
BY SRI.SUMAN CHAKRAVARTHY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W. A. No.1502 of 2015

Dated this the 29th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The borrower, who defaulted repayment to the respondent Bank, is the appellant herein. A total sum of ₹2,82,160/- was borrowed from the respondent Bank by the appellant, for running a dairy-farm, by mortgaging the property in question. The loan amount was agreed to be repaid by way of instalments as specified in the order sanctioning the loan. But by virtue of some adverse circumstances, the appellant was not in a position to meet the loan liability to the Bank and thus, became a defaulter. As a result, steps were pursued by the Bank for recovery of the loan amount. Aggrieved by this, the appellant was compelled to approach this Court by filing W.P.(C) No.9638 of 2014 raising various grounds including that, she was not given an opportunity to clear the entire liability availing the extent of reduction as per various schemes such as, 'Agricultural Debt Waiver and Debt Relief Scheme, 2008' and also the One Time Settlement Scheme introduced by the State Government as 'Ashwas-2014'.

2. The claim of the appellant/ petitioner was sought to be resisted from the part of the Bank. After hearing both the sides, a finding was rendered by the learned single Judge, to the effect that the relief sought for in the writ petition was not liable to be entertained. However, considering the plight of the writ petitioner, the outstanding liability was permitted to be cleared by way of 'fifteen' monthly instalments beginning from 12/01/2015; simultaneously giving a direction to the Bank to quantify the actual amount and to have it let known to the writ petitioner in the meantime. A default clause was also incorporated to the effect that, if at

all there was any failure on the part of the writ petitioner in satisfying the instalment on time, it will be open for the respondent Bank to proceed with further steps so as to recover the entire amount. This is sought to be challenged by filing the present appeal.

3. Heard the learned counsel for the appellant as well as the learned counsel for the respondent Bank.

4. During the course of the hearing, the learned counsel for the appellant submits that the default was not wilful, but on account of the fact that, due to rampant disease to the cattle which died one after another, the dairy-farm ran into loss, and, ultimately, the appellant had to wind up the dairy-farm. Learned counsel also adds that the appellant is suffering from serious Heart problems and huge amounts are being incurred for her treatment, as she requires life long treatment and periodical follow-up actions. The appellant's husband is no more and the appellant's sole

source of sustenance has been lost. Now earnest efforts are being taken to wipe out the entire liability by causing a portion of the property to be sold, after identifying a prospective purchaser. Counsel for the appellant submits that sale to be effected by the Bank will cause prejudice to the rights and liberties of the appellant. Learned counsel for the appellant undertakes that the entire liability will be cleared within five months. The learned counsel further submits that the appellant has already deposited a sum of ₹ 1 lakh yesterday and is ready to effect a further payment of ₹ 1 lakh within two months and that the entire balance liability will be cleared within 'five months' as aforesaid.

5. The learned counsel for the appellant submits that the property is having a total extent of 42 cents and that steps could be pursued to cause a portion of the property to be sold, without much hardship to the appellant, keeping the premises where the residential building is situated, in tact. It

is also pointed out that the total extent of liability was nearly ₹7.75 lakhs and that, after giving credit to a sum of ₹ 1 lakh paid by the appellant yesterday, the balance is ₹6.75 lakhs.

6. The learned counsel for the Bank submits that the benefit of 'Ashwas Scheme, 2014' which was subsequently notified, by and large is still in operation and if the entire liability is cleared by the appellant before the last date (which now stands stipulated as 31/07/2015), the appellant can obtain substantial reduction by way of interest.

7. The learned counsel for the appellant submits that because of the frustrating pecuniary facts and circumstances, the appellant is not in a position to avail the benefit and that, the appellant shall try her level best to avail the said opportunity within the said time or the time to be extended, if any, by the Government. Appellant prays for a direction to the Bank to extend the benefit under the said scheme as well. Learned counsel for the appellant also

submits that, the appellant has already preferred an application to extend the benefit of 'Ashwas Scheme'; in response to which, the learned counsel appearing for the Bank submits that, if the appellant satisfies the amount payable under the Ashwas Scheme before the last date, the matter will be considered by the Bank extending appropriate relief.

8. In the above circumstances, it is left open to the appellant herein to discharge the entire liability availing the benefit of relief under the 'Ashwas Scheme' within the prescribed time notified by the Government. If for any reason, the petitioner is not in a position to wipe out the entire liability within the prescribed time notified by the Government, it is still open for the appellant to discharge the entire outstanding liability within 'five' months from today; subject to the condition that a further amount of ₹ 1 lakh shall be paid within two months from today. Coercive

proceedings, if any, shall be kept in abeyance till such time. It is also made clear that, if any default is committed by the appellant in discharging the entire liability within the time specified as above, it will be open for the respondent Bank to take further steps for recovery of the entire amounts including the subsequent interest, pursuing such steps, from the stage where it stands now.

The writ appeal is disposed of as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE