

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 257 of 2015 (F)

PETITIONERS :

- 1. ANIL JOSEPH, AGED 45 YEARS,
S/O.JOSEPH KURIAN, MALIYIL HOUSE, RAMALLUR,
KOTHAMANGALAM P.O., THATTEKKADU - 686 691.**
- 2. AJIL JOSEPH, AGED 45 YEARS,
S/O.JOSEPH KURIAN, MALIYIL HOUSE, RAMALLUR,
KOTHAMANGALAM P.O., THATTEKKADU - 686 691.**

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS :

- 1. THE AXIS BANK
ASST SALES CENTRE, 3RD FLOOR, CHICAGO PLAZA,
RAJAJI ROAD, ERNAKULAM, KOCHI - 682 035
REPRESENTED BY ITS AUTHORIZED OFFICER.**
- 2. THE AUTHORIZED OFFICER (CONSTITUTED UNDER
THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL
ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002),
THE AXIS BANK, 3RD FLOOR, CHICAGO PLAZA, RAJAJI ROAD,
ERNAKULAM, KOCHI - 682 035.**
- 3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 & R2 BY ADV. SMT.SREEKALA KRISHNADAS
R3 BY GOVERNMENT PLEADER SMT. LILLY K.T.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

WP(C).No. 257 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONERS BY THE
2ND RESPONDENT DATED 15/7/2014.

EXT.P2: TRUE COPY OF THE C.M.P NO.6136/2014 ON THE FILES OF THE CHIEF
JUDICIAL MAGISTRATE'S COURT, ERNAKULAM, DATED 10/11/2014.

EXT.P3: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE
ADVOCATE COMMISSIONER IN C.M.P NO.6136/2014 OF THE CHIEF
JUDICIAL MAGISTRATE'S COURT, ERNAKULAM, DATED 25/11/2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 257 of 2015 (F)

.....
Dated this the 21st day of January, 2015

JUDGMENT

The petitioners, who had availed of a housing loan from the 1st respondent Bank in the year 2004, defaulted in re-payment of the same. Consequently, the respondent bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', against the petitioners. Ext.P1 is the notice issued under Section 13(2) of the SARFAESI Act to the petitioners in that regard. Ext.P3 is the order passed by the Chief Judicial Magistrates Court, Ernakulam appointing an Advocate Commissioner to take possession of the immovable property that was offered as security to the respondent Bank, for the loan availed by the petitioners. In the writ petition, the petitioners impugn the steps initiated by the respondent Bank for recovery of the loan amounts.

2. Heard Sri.C.P.Udayabhanu the learned counsel appearing for the petitioners and Smt.Lilly K.T, learned Government Pleader appearing for the 3rd respondent.
3. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that the sole prayer of the petitioner is to permit them to remit the

overdue amount outstanding to the bank in easy installments. Taking into account the plea of financial hardship raised by the petitioners, I dispose the writ petition with the following directions:

i) The overdue amount due to the respondent Bank under the loan agreement is stated to be Rs.3,25,000/- together with accrued interest. Accordingly, if the petitioner remits the overdue amount of Rs.3,25,000/- together with accrued interest in six equal and successive monthly installments commencing from 16.02.2015, and continues to pay the regular monthly installments as per the original loan schedule, then, the recovery steps initiated against them by the respondent bank shall be kept in abeyance.

ii) It is made clear that, if the petitioners commit a default in respect of any of the installments, they will lose the benefit of this judgment and the respondent bank will be free to continue the recovery proceedings against them from the stage at which they presently stand.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE