IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 2346 of 2015 (P)

PETITIONER(S):

ROY ABRAHAM, AGED 45 YEARS,
S/O.LATE ABRAHAM, RESIDING AT 'THURUTHIVILAYIL'
PADINJATTAKIZHAKKU MURI, SOORANADU
SOORANADU NORTH P.O., KOLLAM DISTRICT - PIN 683542.

BY ADVS.SRI.SAIJU S.
SRI.P.H.RISHAD

RESPONDENT(S):

STATE BANK OF INDIA
RASMECCC, 2ND FLOOR, RAVI'S ARCADE
NEAR IRON BRIDGE, KOLLAM, PIN 691013
REPRESENTED BY ITS AUTHORISED OFFICER UNDER THE SARFAESI ACT 2002.

R1 BY ADV. SRI.R.S.KALKURA
R BY SRI.R.S.KALKURA, SC, SBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 2346 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: THE TRUE COPY OF THE DEMAND NOTICE DATED 21/3/2014 ISSUED BY THE RESPONDENT BANK TO THE PETITIONER, UNDER SECTION 13(2) OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002.

EXHIBIT-P2: THE TRUE COPY OF THE LETTER DTD.15/5/2014, ISSUED TO THE PETITIONER BY THE RESPONDENT BANK.

EXHIBIT-P3: THE TRUE COPY OF THE LETTER DTD.31/5/2014, ISSUED TO THE PETITIONER BY THE RESPONDENT BANK.

EXHIBIT-P4: THE TRUE COPY OF THE REPRESENTATION DTD.11/6/2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT BANK.

EXHIBIT-P5: THE TRUE COPY OF THE PAY-IN-SLIP COUNTER FOIL EVIDENCING REMITTANCE MADE BY THE PETITIONER ON 17/6/2014.

EXHIBIT-P6: THE TRUE COPY OF THE POSSESSION NOTICE DATED 17/6/2014, ISSUED UNDER SECTION 13(4) OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002, AS PUBLISHED IN THE MATHRUBHUMI DAILY (KOLLAM EDN.) DTD.17/6/2014.

EXHIBIT-P7: THE TRUE COPY OF THE DEMAND NOTICE DATED 13/8/2014 ISSUED BY THE RESPONDENT BANK TO THE PETITIONER, UNDER SECTION 13(2) OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002.

EXHIBIT-P8: THE TRUE COPY OF THE POSSESSION NOTICE DATED 4/11/2014, ISSUED UNDER SECTION 13(4) OF THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002, AS PUBLISHED IN THE MATHRUBHUMI DAILY (KOLLAM EDN.) DTD.4/11/2014.

EXHIBIT-P9: THE TRUE COPY OF THE PAY-IN-SLIP COUNTER FOILS EVIDENCING PETITIONER'S REMITTING THE EMI'S FROM JUNE TO DECEMBER 2014.

EXHIBIT-P10: THE TRUE COPY OF THE LETTER DTD.16/12/2014 ISSUED TO THE PETITIONER, BY THE RESPONDENT BANK.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.2346 OF 2015 (P)

Dated this the 10th day of February, 2015

J U D G M E N T

The petitioner, who had availed of a housing loan from the respondent bank, defaulted in repayment 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', to recover the loan amounts. In the writ petition, the petitioner is aggrieved by the steps taken by the respondent bank to recover the defaulted loan amounts. It is the specific case of the petitioner that while he has remitted substantial payments in accordance with the repayment schedule, and has in fact cleared the entire overdue arrears, the payments made by him have not been reflected in the accounts of the respondent bank and this led the respondent bank to issue Section 13(2) notice to him in respect of the alleged defaulted amounts. It is also his case that there is a threat of dispossession in that the Advocate Commissioner has issued a notice stating that he would take possession of the secured assets on 20.2.2015.

2. I have heard Sri.Saiju.S., the learned counsel appearing for the petitioner as also Sri.R.S.Kalkura, the learned Standing counsel appearing for the respondent Bank.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I note that in this case, the petitioner has a dispute regarding the correctness of the amounts demanded from him by the respondent bank. The main grievance of the petitioner is with regard to the addition of certain expenses by the respondent bank, to the amounts shown to be due and payable by him in respect of the loan transaction. Under these circumstances, I feel that the petitioner has to approach the Debt Recovery Tribunal for an adjudication of the issue. There is also an apprehension raised by the petitioner with regard to the possible dispossession on 20.2.2015. Taking note of the said submission of the petitioner, and to give him sufficient time to move the Debt Recovery Tribunal for appropriate reliefs, I stay further proceedings, for dispossession of the petitioner from the property in question, for a period of two weeks so as to enable the petitioner to move the Debt Recovery Tribunal, as above.

It is made clear that on the expiry of the period of two weeks, the stay granted in this judgment shall also expire. The writ petition, in its challenge against the steps taken by the respdondent bank for recovery of the loan amounts, is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp