

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 2590 of 2015 (W)

PETITIONERS :

- 1. JAMSHEER N., AGED 31 YEARS,
S/O.MUSTHAFFA, NADAKKAL HOUSE P O, NEDUVA
673303, PARAPPANGANGADI, MALAPPURAM DIST**
- 2. MUSTAFFA N., AGED 54 YEARS,
S/O.MUHAMMED, NADAKKAL HOUSE,
P. O. NEDUVA, 673303, PARAPPANANGADI,
MALAPPURAM DIST**

**BY ADVS.DR.V.N.SANKARJEE
SRI.V.N.MADHUSUDANAN
SRI.S.SIDHARDHAN
SRI.PRATHAP. S.R.K.
SMT.R.UDAYA JYOTHI**

RESPONDENTS :

- 1. THE AUTHORISED OFFICER, (GENERAL MANAGER)
MALAPPURAM DIST CO-OPERATIVE BANK LTD, UPHILL
MALAPPURAM-676505**
- 2. MALAPPURAM DISTRICT CO-OPERATIVE BANK LTD.,
PARAPPANANGADI BRANCH, PAYANINGAL JUNCTION
PARAPPANGADI, REP BY ITS SECRETARY**

R1 & R2 BY SRI.ESM.KABEE, SC,

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE NOTICE DTD 4/3/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS.
- P2:- TRUE COPY OF THE NOTICE DTD 22/7/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS.
- P3:- TRUE COPY OF THE RECEIPT DTD 9/8/2014 ISSUED BY THE 2ND RESPONDENT.
- P4:- TRUE COPY OF THE DISCHARGE SUMMARY DTD 29/8/2014 ISSUED FROM FATHIMA HOSPITAL IN RESPECT OF THE 2ND PETITIONER.
- P5:- TRUE COPY OF THE DISCHARGE SUMMARY DTD 7/10/2011 OF THE SECOND PETITIONER'S WIFE SAFIYA ISSUED FROM EMS MEMORIAL CO-OPERATIVE HOSPITAL & RESEARCH CENTRE LTD PERINTALMANNA.
- P6:- TRUE COPY OF THE VISA DTD 4/6/2012 IN RESPECT OF THE 2ND PETITIONER

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 2590 of 2015 (W)

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Dated this the 23rd day of February, 2015

JUDGMENT

The first petitioner, who availed of a loan of Rs.5,00,000/- from the 2nd respondent Bank, and the second petitioner, who stood as a guarantor and created equitable mortgage on their property, defaulted in re-payment of the loan amount. 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 petitioner. Ext.P1 is the demand notice issued under Section 13(2) of the SARFAESI Act and Ext.P2 is the possession notice issued to the petitioners in that regard. In the writ petition, the petitioners impugn the steps initiated by the respondent Bank for recovery of the loan amounts.

2. Heard Sri.V.N.Sankarjee, the learned counsel appearing for the petitioners and Sri.ESM Kabeer, learned Standing counsel appearing for the 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 petitioners is to permit them to remit the

overdue amount 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 total overdue amount in respect of the loan from the petitioners to the respondent Bank is stated to be an amount of Rs.4,99,000/- together with accrued interest and other charges. Accordingly, if the petitioner remits the amount of Rs.4,99,000/- together with accrued interest and other charges in six equal and successive monthly installments commencing from 05.03.2015, and continues to pay the regular monthly installments as per the original loan schedule, then, the recovery steps initiated against him shall be kept in abeyance.

(ii) It is made clear that, if the petitioners commit a default in respect of any of the instalments, 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