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. 3222 of 2015 (C)

PETITIONER(S):
----

1. **K.SODARAN, S/O.KANNAN,**
   SREE KRISHNA NILAYAM, THAZHAMEL,
   ANCHAL, KOLLAM - 691306.

2. **BEENA SODARA, W/O.K.SODARAN,**
   SREE KRISHNA NILAYAM, THAZHAMEL,
   ANCHAL, KOLLAM - 691306.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENT(S):
----

1. **BRANCH MANAGER,**
   THE FEDERAL BANK LTD.,
   ANCHAL BRANCH, R.O.JUNCTION,
   ANJAL, KOLLAM - 691 306.

2. **THE AUTHORIZED OFFICER,**
   THE FEDERAL BANK LTD., ANCHAL BRANCH,
   R.O.JUNCTION, ANJAL, KOLLAM - 691 306.

BY ADVS. SRI.GEORGE VARGHESE (MANACHIRACKEL)
SMT.SALI. P. MATHEW (MUNNAR)

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

mbr/

WP(C).No. 3222 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 - **TRUE COPY OF THE ORDER OF THE DRT DATED 10-9-13.**

EXT.P2 - **TRUE COPY OF THE RECOVERY CERTIFICATE DTD.16-8-14 ISSUED BY THE RECOVERY OFFICER DRT.**

EXT.P3 - **TRUE COPY OF THE COMMUNICATION FROM THE RESPONDENTS DTD.18-12-14 RECEIVED BY THE PETITIONER.**

EXT.P4- **TRUE COPY OF THE SALE NOTICE DTD.27-12-14.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.3222 of 2015

....

Dated this the 10th day of February, 2015

JUDGMENT

The 1st petitioner and his wife who are the borrower and guarantor respectively of a loan from the respondent bank, committed default in repayment of the same. The respondent bank initiated proceedings under the Recovery of Debts due to Banks and Financial Institutions Act,1993 by filing an O.A before the Debt Recovery Tribunal. The said O.A was disposed by Ext.P1 final order whereby the petitioners became liable to pay the amounts due to the respondent bank. Although, the petitioners preferred an application before the Debt Recovery Tribunal to set aside the final order which was passed ex parte, the tribunal did not consider the application favourably and the said application came to be dismissed by the Debt Recovery Tribunal. Thereafter, by Ext.P2 notice issued by the Recovery Officer, the petitioners were called upon to pay the amounts confirmed against them by Ext.P1 final order. This was followed by Ext.P4 notice for sale issued by the respondent bank. In the writ petition, the petitioners challenge Ext.P2 notice issued by the Recovery Officer of the Debt Recovery Tribunal.

2. I have heard Sri.Sheji P.Abraham, the learned counsel for the petitioners.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that Ext.P2 notice is dated 06.08.2014 and the petitioners have an effective alternate remedy against the said notice in the form of an appeal before the Debt Recovery Tribunal itself in terms of Section 17 of the SARFAESI Act. There is no reason forthcoming in the writ petition as to why the petitioners had not availed the said remedy, and chose instead to approach this Court under Article 226 of the Constitution of India. In my view, the remedy of the petitioners lies in approaching the Debt Recovery Tribunal against Ext.P2 notice of the recovery officer. I do not see any scope for interfering with the said notice in the present proceedings. The writ petition is therefore dismissed as not maintainable.

Counsel for the petitioners would submit that the sale pursuant to Ext.P4 notice is posted on 11.02.2015, and hence, they may not get sufficient time to approach the Debt Recovery Tribunal through an appeal against Ext.P2 notice. Taking note of the said submission,I defer the sale pursuant to Ext.P4 notice by a period of two weeks, making it clear that on expiry of the period of two weeks, the stay granted in this judgment shall expire, and the respondent bank will be free to continue with the sale proceedings based on Ext.P4 notice itself without the requirement of any further notice to the petitioners. The petitioners are directed to explore their remedies against Ext.P2 notice in the meanwhile and the deferment of the sale is only to enable the petitioners to approach the Debt Recovery Tribunal within the period of two weeks granted in this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/