IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 5039 of 2015 (D)

PETITIONER(S):

1. M/S.INDIRA FUEL STATION,
   PROPX.INDIRA DEVI.V.B.,
   KADUTHURUTHY-KURAVILANGADU ROAD, NEEZHOOR,
   THIRUVAMBADY P.O., KOTTAYAM-686 612.

2. PANKAJAKSHY AMMA V.M.,
   SAROVARAM (LAKSHMI NIVAS), PANANGAD P.O.
   ERNAKULAM-682 506.

3. VASUDEVAN L.B.,
   S/O.PANKAJAKSHY AMMA, SREELAKSHMI, PANANGAD P.O.,
   ERNAKULAM-682 506.

4. SATHYASEELAN NAIR N.,
   SAROVARAM (LAKSHMI NIVAS), PANANGAD P.O.,
   ERNAKULAM-682 506.

BY ADV. SRI.K.N.CHANDRABABU.

RESPONDENT(S):

1. THE CATHOLIC SYRIAN BANK LTD.,
   TRIPUNITHURA, ERNAKULAM DISTRICT,
   REPRESENTED BY ITS MANAGER.

2. THE AUTHORISED OFFICER,
   CATHOLIC SYRIAN BANK LTD, ZONAL OFFICE, DJM BUILDING,
   PB NO.1154, MARKET ROAD, ERNAKULAM,
   KOCHI-682 011.

BY ADV.SRI.C.A.JOY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-03-2015, ALONG WITH WPC. 6449/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1. TRUE COPY OF THE NOTICE NO.EZ/SEC/2787/2013 DATED 20/09/2013 U/S.13(2) SECURITIZATION AND RECONSTRUCTIONS OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002 R/W.RULE 3 OF THE SECURITY INTEREST (ENFORCEMENT) RULES, 2002.

EXT.P2. TRUE COPY OF THE NOTICE U/S.13(4) 27/11/2013 OF THE ACT ISSUED BY THE RESPONDENT BANK AGAINST THE PETITIONERS.

EXT.P3. TRUE COPY OF THE NOTICE NO.EZ/SEC/5018/2014 DATED 20/2/2014 ISSUED BY THE RESPONDENT BANK TO THE PETITIONERS.

EXT.P4. TRUE COPY OF THE DISCHARGE SUMMARY ISSUED FROM THE DEPARTMENT OF INTERVENTIONAL CARDIOLOGY OF LOURDES HOSPITAL, ERNAKULAM, KOCHI.

EXT.P5. TRUE COPY OF THE CERTIFICATE OF PHYSICALLY HANDICAPPED PERSON ISSUED BY THE DISTRICT MEDICAL BOARD, ERNAKULAM, CERTIFYING THAT THE SON OF THE SECOND PETITIONER SARATH S. NAIR IS SUFFERING FROM MILD MENTAL RETARDIATION.

EXT.P6. TRUE COPY OF THE REPRESENTATION DATED 27/3/2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT BANK.

EXT.P7. TRUE COPY OF THE DEPOSIT RECEIPT DATED 27/3/2014 ISSUED BY THE RESPONDENT BANK.

EXT.P8. TRUE COPY OF THE NOTICE NO.EZSCC 8/14 DATED 13/1/2015.

EXT.P9. TRUE COPY OF THE SALE NOTICE DATED 22/1/2015 PUBLISHED IN MATHRUBHUMI VERNACULAR DAILY TO SELL THE PROPERTY BELONGING TO THE PETITIONERS 2 & 3 ON 25/2/2015.

EXT.P10. TRUE COPY OF THE INTIMATION GIVEN BY THE DIVISIONAL OFFICE OF THE INDIAN OIL CORPORATION REGARDING REMITTANCE OF BILL AMOUNT ENTITLED TO THE 4TH PETITIONER TO THE 1ST RESPONDENT BANK THROUGH PAPER BASED NEFT/EFT/RTGS TRAN. NO.109206 (4202) DATED 29/8/2014.

EXT.P11. TRUE COPY OF THE INTIMATION GIVEN BY THE DIVISIONAL OFFICE OF THE INDIAN OIL CORPORATION REGARDING REMITTANCE OF BILL AMOUNT ENTITLED TO THE 4TH PETITIONER TO THE 1ST RESPONDENT BANK THROUGH PAPER BASED NEFT/EFT/RTGS TRAN. NO.109224 (4202) DATED 5/9/2014.

EXT.P12. TRUE COPY OF THE INTIMATION GIVEN BY THE DIVISIONAL OFFICE OF THE INDIAN OIL CORPORATION REGARDING REMITTANCE OF BILL AMOUNT ENTITLED TO THE 4TH PETITIONER TO THE 1ST RESPONDENT BANK THROUGH PAPER BASED NEFT/EFT/RTGS TRAN. NO.449764 (4202) DATED 22/12/2014.

EXT.P13. TRUE COPY OF THE INTIMATION GIVEN BY THE DIVISIONAL OFFICE OF THE INDIAN OIL CORPORATION REGARDING REMITTANCE OF BILL AMOUNT ENTITLED TO THE 4TH PETITIONER TO THE 1ST RESPONDENT BANK THROUGH PAPER BASED NEFT/EFT/RTGS TRAN. NO.449980(4202) DATED 20/1/2015.

EXT.P14. TRUE COPY OF THE INTIMATION GIVEN BY THE DIVISIONAL OFFICE OF THE INDIAN OIL CORPORATION REGARDING REMITTANCE OF BILL AMOUNT ENTITLED TO THE 4TH PETITIONER TO THE 1ST RESPONDENT BANK THROUGH PAPER BASED NEFT/EFT/RTGS TRAN. NO.449970 (4202) DATED 19/1/2014.

EXT.P15. TRUE COPY OF THE INTIMATION GIVEN BY THE DIVISIONAL OFFICE OF THE INDIAN OIL CORPORATION REGARDING REMITTANCE OF BILL AMOUNT ENTITLED TO THE 4TH PETITIONER TO THE 1ST RESPONDENT BANK THROUGH PAPER BASED NEFT/EFT/RTGS TRAN. NO.449961 (4202) DATED 16/1/2014.

EXT.P16. TRUE COPY OF THE COMPUTERISED STATEMENT OF ACCOUNT PERTAINING TO THE ACCOUNT NO.0095-02918740-708001 FOR THE PERIOD FROM 1/4/2013 TO 12/9/2014 PROVIDED TO THE PETITIONER BY THE RESPONDENT BANK.

EXT.P17. TRUE COPY OF THE COMPUTERISED STATEMENT OF ACCOUNT PERTAINING TO THE ACCOUNT NO.0095-02850432-718001 FOR THE PERIOD FROM 23/7/20`13 TO 10/09/2014 PROVIDED TO THE PETITIONER BY THE RESPONDENT BANK.

EXT.P18. TRUE COPY OF THE DISCHARGE SUMMARY ISSUED TO THE 4TH PETITIONER FROM THE LOURDES HOSPITAL, ERNAKULAM.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

W.P.(C) Nos.6449 of 2014 &
5039 of 2015

Dated this the 9th day of March, 2015

JUDGMENT

The petitioners are the same in both these writ petitions. Grievance pertains to the steps taken by the respondent Bank invoking the remedy under SARFAESI Act for realising of the amount stated as due under a loan transaction.

2. The learned counsel for the petitioners submits that, the the second writ petition, ie. WP(C) No.5039 of 2015, came to be filed by virtue of the subsequent developments after filing the other one. It is stated that, earnest efforts were being taken by the petitioners to discharge the liability in respect of the two loans availed by the petitioners in connection with running of a retail fuel station. The first 'Overdraft' facility of Rupees Fifteen lakhs was availed by the first petitioner, whereas the second one was for a sum of Rupees Twenty five lakhs availed by the 4th petitioner. Sufficient collateral security was also furnished

creating security interest over the same. However, by virtue of some unforeseen circumstances, there occurred some default and in the said circumstances, both the accounts were declared as 'N.P.A.' and the Bank proceeded with steps under the SARFAESI Act, which made the petitioners to approach this Court.

3. The learned counsel for the petitioners points out that, pursuant to the understanding between the petitioners and the Bank, the petitioners sought to satisfy a substantial portion of the arrears by effecting various payments as described in the writ petition. Subsequently, the amount payable to the petitioner by the Oil Marketing Company to an extent of more than Rupees Eight lakhs was also caused to be directly deposited in respect of the Account of the petitioners to the Bank, which was not given credit to on time.

4. Today, when the matter is taken up for further consideration, the learned counsel for the petitioners points out that, the matter has been sorted out between the petitioners and Bank and that the Bank was gracious enough to grant the

petitioners time till 31.03.2015, so as to clear the entire liability in respect of the first loan availed by the 1st petitioner, and to have the other loan availed by the 4th petitioner to be regularised.

5. The learned counsel appearing for the Bank submits that, the total outstanding liability as on date in respect of the first loan availed by the first petitioner is about Rupees Seventeen lakhs and the entire amount due is to be cleared on or before 31.03.2015, if at all the loan facility given to the 4th petitioner is to be regularised.

6. In view of the understanding and the willingness expressed from the part of the petitioners to clear the entire outstanding liability in respect of the first loan availed by the first petitioner, both the matters are disposed of, recording the submissions and with liberty to the petitioners to satisfy the entire outstanding liability in respect of the first loan availed by the first petitioner on or before 31.03.2015. Subject to this, the other loan, which was availed by the 4th petitioner, will stand regularised. This will be in addition to the liability of the

concerned petitioners/parties to satisfy the regular monthly instalments in respect of the second loan. If any default is committed with regard to the satisfaction of the entire liability with regard to the first loan on or before 31.03.2015, or if any two consecutive defaults are made with regard to satisfaction of the regular instalments in respect of the second loan, the Bank will be at liberty to proceed with further steps for realisation of the entire amount in lump, from the stage where it stands now. Subject to this, the coercive proceedings shall be kept in abeyance for the time being.

The petitioners shall produce a copy of this judgment, along with a copy of the writ petition, before the respondents, for further steps.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

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