

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. 6449 of 2014 (E)

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. PANKAJAKSHYAMMA, SREELAKSHMI, PANANGAD.P.O.,
ERNAKULAM-682 506.
4. SRI. 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,
P.B. 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 WP(C)NO.5039/2015, 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 20-9-2013 UNDER SECTION 13(2) SECURITIZATION AND RECONSTRUCTION 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 UNDER SECTION 13(4) 27-11-13 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 SUMMERY ISSUED FROM THE DEPARTMENT OF INTERVENTIONAL CARDIOLOGY OF LOURDE HOSPITAL, ERNAKULAM KOCHI.
- EXT. P5. TRUE COPY OF THE CERTIFICATE FOR 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 RETARDATION.
- EXT. P6. A TRUE COPY OF THE REPRESENTATION DATED 27/03/2014 SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENT BANK.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

W.P.C. No.6449 OF 2014

Dated this the 18th day of March, 2014.

JUDGMENT

Petitioners 1 & 4 availed an Overdraft facility of Rupees Fifteen lakhs and Rupees Twenty five lakhs respectively from the respondent Bank, for which the petitioners 2 & 3 stood as guarantors. Security interest was created over the property having an extent of 10.49 Ares of land and building comprised in Resurvey No.281/5, Block No.16, Kumbalam Village Kanayanuur Taluk, Ernakulam District. Since the timely repayment could not be effected, the Bank proceeded with steps under the SARFAESI Act, which in turn is under challenge in this writ petition.

2. Because of the default on the part of the petitioners, the property has been put to sale on 25.03.2014. The petitioners have approached this Court for enabling them to satisfy the liability by way of reasonable instalments.

3. The learned counsel for the petitioners submits that the default was never wilful but because of some unforeseen circumstances and that the petitioners do not intend to challenge

the facts and figures or as to the liability of the petitioners to satisfy the due amount.

4. Heard the learned counsel for the respondent Bank as well.

5. During the course of hearing, it is brought to the notice of this Court by the learned counsel appearing for either side, that the Bank has expressed willingness to take the loan account outside the purview of 'N.P.A.', subject to satisfaction of Rupees 'Seven lakhs' on or before 25.03.2014, which stated as agreeable to the petitioner. It is also pointed out from the part of the Bank that, subject to satisfaction of the said amount and on filing an application, expressing whether the petitioner wants to continue the account or to have the remaining liability closed by way of instalments, the matter could be considered and appropriate orders would be passed by the Bank, so as to redress the grievance of the petitioner and that the sale scheduled on 28.03.2014 could be kept in abeyance for the time being.

6. After considering the facts and circumstances, the writ petition is disposed of recording the above submissions. Subject

to this, the recovery proceedings shall be kept in abeyance, for the time being. It is made clear that, if the commitment is not honoured by the petitioners, it will be open for the respondents to proceed with further steps to recover the due amount from the stage where it stands now.

**P.R. RAMACHANDRA MENON,
JUDGE**

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