IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 7835 of 2015 (D)

PETITIONER(S):

TICHU TOMY, AGED 51 YEARS,
S/O. K.A. JOSEPH, PROPRIETOR,
M/S. (V) INTERNATIONAL IMPORT & EXPORTS,
HOLY TUESDAY SHOPPING MALL,
NEAR ST. ANTONY'S CHURCH,
KALOOR, KOCHI-682 017.

BY ADV. SRI.N.K.MOHANLAL.

RESPONDENT(S):
----

1. **THE AUTHORISED OFFICER, CANARA BANK,**
   KALOOR BRANCH, KALOOR, KOCHI-17.

2. **THE BRANCH MANAGER,**
   CANARA BANK, KALOOR BRANCH,
   KALOOR, KOCHI-17.

BY ADV. SRI.P.GOPINATH MENON, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-04-2015, ALONG WITH WP(C).NO.9474 OF 2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 7835 of 2015 (D)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: TRUE COPY OF THE NOTICE UNDER SECTION 13(2) OF SARFAESI ACT DATED 08.12.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P2: TRUE COPY OF OBJECTION DATED 11.02.2015 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P3: TRUE COPY OF REPLY DATED 16.02.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K.VINOD CHANDRAN, J

W.P.(C).Nos. 7835 & 9474 of 2015

Dated 6th April, 2015

JUDGMENT

The petitioners are son and father who have jointly availed of three loans from the Canara Bank, which is the respondent Bank. The petitioners have filed two separate writ petitions as if the two loans are separate and distinct. W.P.(C).7835 of 2015 is filed to interdict the SARFAESI proceedings initiated against the mortgaged property for realization of a Cash Credit loan. W.P.(C).9474 of 2015 is filed by the father seeking interdiction of the SARFAESI proceedings initiated for realization of the housing loan.

2. The respondent Bank has filed a statement in W.P.(C).7835 of 2015. It has been specifically contended in the said statement that the petitioners had availed of the

facilities from the respondent Bank jointly. The petitioners had availed a Cash Credit loan initially as a working Capital loan. Later, on additional security being offered by mortgaging the land, the same was converted into a Cash Credit loan with an enhanced limit. The adhoc limit of Rs.15 Lakhs expired on 28.08.2014 and the permanent limit of Rs.150 Lakhs also got expired on 29.01.2015. There has been no payment made after that, is the contention of the respondent Bank.

3. The specific contention raised by the petitioner is that due to Metro Rail construction, the furniture business has been effected. However, the submission of the Bank indicates that loans were availed for manufacturing, trading and export of watches, clocks and time pieces and not for furniture business. The specific contention raised by the

respondent Bank is that the amounts granted for such business have been diverted to the furniture business which has resulted in huge default having occurred in the Cash Credit loan. The housing loan is also said to be jointly availed by the father and the son which also is in default. There is yet another loan taken for purchase of a vehicle which too has been defaulted. The total liability towards the respondent Bank, from the petitioners together, jointly and severally, comes to around Rs.2,36,23,893.83 is the contention.

4. The learned counsel for the petitioners specifically refers to Ext.P3 in W.P.(C).7835 of 2015 wherein the petitioner was called for a discussion with respect to the regularization of the loan account. It is submitted that the Bank had demanded Rs.18 Lakhs which, according to the petitioners, is quite arbitrary. The

learned counsel for the respondent Bank however, refutes such submission and contends that the petitioners have never turned up for any discussion with the respondent Bank.

5. Even as per the petitioners' averments, the demand of Rs.18 Lakhs is said to be arbitrary. However, this Court is not able to countenance such contention especially considering the total liability of more than 2,36,00,000/-. In such circumstances, symbolic possession would continue. However the respondent Bank is directed to communicate the proposal for regularization within a period of one week from today by registered post to the petitioners and if the petitioners are desirous of availing the same, they could do that. In the facts and circumstances of the case, this Court is not inclined to extent any equity to the petitioners who have been proceeded with under

the SARFAESI Act. The respondent Bank would be entitled to proceed against the petitioners for recovery, if the petitioners do not comply with the demand made by the Bank

The writ petitions would stand dismissed.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

//True Copy//