IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 8172 of 2015 (V)

PETITIONER(S):
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1. **BALAKRISHNAN.M, AGED 49 YEARS**
   'KARUNA', EAST VYRELIL HOUSE, THRIPUNITHURA
   ERNAKULAM, KOCHI - 682 031.

2. **USHA BALAKRISHNAN,**
   'KARUNA', EAST VYRELIL HOUSE, THRIPUNITHURA
   ERNAKULAM, KOCHI - 682 031.

BY ADVS.SRI.R.MANOJ
SMT.SINDHU MANOJ
SMT.P.P.BLESSY MOL
SMT.P.M.FAREETHA BANU

RESPONDENT(S):
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1. **INDIABULLS HOUSING FINANCE LIMITED**
   HAVING REGISTERED OFFICE AT M62 AND 63, FIRST FLOOR
   CONNAUGHT PLACE, NEW DELHI - 110001.

2. **THE AUTHORISED OFFICER,**
   INDIABULLS HOUSING FINANCE LIMITED
   HAVING REGISTERED AT M62 AND 63, FIRST FLOOR
   CONNAUGHT PLACE, NEW DELHI - 110001.

3. **THE MANAGER,**
   INDIABILLS HOUSING FINANCE LIMITED
   COCHIN - 682 031.

R3 BY ADV. SRI.MADHU RADHAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 8172 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE REPAYMENT SCHEDULE AND SCHDEULE IN RESPECT OF LOAN AVAILED BY THE PETITIONERS FROM THE 1ST RESPONDENT BANK

EXT.P2: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER TO THE RESPONDENTS DATED 31/10/2013.

EXT.P3: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONERS DATED 20/6/2014.

EXT.P4: TRUE COPY OF LAWYERS NOTICE ISSUED TO THE RESPONDENTS DATED 01/07/2014

EXT.P5: TRUE COPY OF THE COPY REPRESENTATION SUBMITTED BY THE PETITIONERS DATED 5/7/2014

EXT.P6: TRUE COPY OF THE LETTER ISSUED TO THE PETITIONERS BY THE 1ST RESPONDENT DATED 5/7/2014

EXT.P7: TRUE COPY FO THE NOTICE ISSUED TO THE PETITIONERS DATED 20/10/2015

EXT.P8: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONERS DATED 3.1.2015.

EXT.P9: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONERS DATED 3/1/2015

EXT.P10: TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS

EXT.P11: COPY OF THE CERTIFICATE ISSUED BY THE GENERAL HOSPITAL, ERNAKULAM DATED 13.12.1995.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8172 OF 2015 (V)

Dated this the 17th day of March, 2015

J U D G M E N T

The petitioners, who had availed of a loan from the respondent bank, defaulted in repayment of the same. 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', to recover the loan amounts. Ext.P8 is the possession notice issued to the petitioners under the SARFAESI Act and Ext.P10 is the notice issued by the Advocate Commissioner pursuant to the direction issued by the Chief Judicial Magistrate Court, Ernakulam. In the writ petition, the petitioners impugn the steps initiated by the respondent bank for recovery of the loan amounts.

2. I have heard the learned counsel appearing for the petitioners as also the learned Standing counsel appearing for the respondent bank.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I note that the sole prayer of the petitioners is to permit them to remit the balance amounts outstanding 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, is stated to be Rs.20,52,566/- together with accrued interest. Accordingly, if the petitioners pay an amount of Rs.4,00,000/- on or before 31.3.2015 and pay the balance amount of Rs.16,52,566/- together with accrued interest in five equal and successive monthly installments commencing from 30.4.2015, and continues to keep up the regular installment payments as per the original loan schedule, then the further proceedings initiated against them by the respondent bank shall be kept in abeyance.
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> (ii) It is made clear that if the petitioners commit a default in respect of any of the installments, 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp