IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 8930 of 2015 (M)

PETITIONER :

SHABHABDEEN A., AGED 59 YEARS
S/O.ABOOSHAHAMAN KUNJU, SHABNA COLLEGE, ATTIMPURAM
PANAVOOR P.O., NEDUMANGAD – 695568.

BY ADVS.SRI.C.K.JAYAKUMAR
SMT.E.SHEENA

RESPONDENT :

HDFC LTD
HDFC HOUSE, VAZHUTHACAUD, PB.NO.2288
THIRUVANANTHAPURAM - 695010
REPRESENTED BY ITS AUTHORIZED OFFICER.

BY SMT.S.AMBILY,SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

WP(C).No. 8930 of 2015 (M)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1: **TRUE PHOTOCOPY OF NOTICE DATED 23.09.2014 ISSUED BY THE RESPONDENT TO THE PETITONER.**

EXT. P2: **TRUE PHOTOCOPY OF NOTICE DATED 06.10.2014 ISSUED BY THE RESPONDENT TO THE PETITIONER.**

EXT. P3: **TRUE PHOTCOPOY OF THE NOTICE DATED 20.02.2015 ISSUED BY THE ADVOCATE COMMISSIONER IN MC.NO.8/2015 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.**

EXT. P4: **TRUE PHOTOCOPY OF REPRESENTATION DATED 12.03.2015 ISSUED BY THE PETITONER TO THE RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL
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//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8930 OF 2015 (M)

Dated this the 20th day of March, 2015

J U D G M E N T

The petitioner, who had availed of a loan from the respondent bank, defaulted in repayment of the same. Consequently, the respondent bank initiated proceedings under the SARFAESI Act, hereinafter referred to as the 'SARFAESI Act', to recover the loan amounts. Ext.P2 is the notice issued under Section 13(2) of the SARFAESI Act and Ext.P3 is the notice issued by the Advocate Commissioner pursuant to the direction issued by the Chief Judicial Magistrate Court, Thiruvananthapuram. In the writ petition, the petitioner impugns the steps initiated by the respondent bank for recovery of the loan amounts.

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

3. 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 petitioner is to permit him to remit the balance amounts outstanding to the bank in easy installments. Taking into account the plea of financial hardship raised by the petitioner, I dispose the writ petition with the following directions:-

> (i) The total overdue amount, in respect of the loan, is stated to be Rs.1,65,568/- together with accrued interest. Accordingly, if the petitioner pays the said amount of Rs.1,65,568/- together with accrued interest in five equal and successive installments commencing from 31.3.2015, and continues to keep up the regular installment payments as per the original loan schedule, then the further proceedings initiated against him by the respondent bank shall be kept in abeyance.
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> (ii) On the petitioner remitting the first two installments as directed above, the respondent bank shall consider Ext.P4 representation preferred by the petitioner seeking One Time Settlment benefit. If the respondent bank finds the petitioner eligible for any benefit, then the bank shall intimate the petitioner of the reduced amounts and the liability of the petitioner will be only for the reduced amounts.
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> (iii) Subject to the above, it is made clear that if the petitioner commits a default in respect of any of the installments, he will lose the benefit of this

judgment and the respondent bank will be free to continue the recovery proceedings against him from the stage at which they presently stand.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp