

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 10025 of 2015 (C)  
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PETITIONERS:  
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1. LUCY ANTONY, AGED 65 YEARS,  
W/O. LATE E.J.ANTONY, ELAVATHINGAL HOUSE, 4/2972  
AMULYA STREET, BANERJI ROAD, ERNAKULAM VILLAGE,  
KACHERIPPADY, KOCHI-682 018.
2. BIJU ANTONY AGED 42 YEARS,  
S/O. LATE E.J.ANTONY, ELAVATHINGAL HOUSE, 4/2972,  
AMULYA STREET, BANERJI ROAD, ERNAKULAM VILLAGE,  
KACHERIPPADY, KOCHI-682 017.

BY ADVS.SRI.K.J.MOHAMMED ANZAR  
SRI.T.B.GAFOOR

RESPONDENTS:  
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- 1.THE COCHIN SERVICE CO-OPERATIVE BANK LTD.NO.E-760,  
GOLDEN JUBILEE BUILDING ROAD, KOCHI-17,  
REP.BY ITS SECRETARY, GOLDEN JUBILEE BUILDING ROAD,  
KOCHI-17.
2. THE INSPECTOR OF CO-OPERATIVE SOCIETIES,  
SOUTH UNIT, OFFICE OF THE ASSISTANT  
REGISTRAR OF CO-OPERATIVE SOCIETIES, KANAYANNUR  
KOCHI-18, ERNAKULAM.

R1 BY ADV. SRI.C.N.SAMEER  
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

: 2 :

**APPENDIX**

PETITIONERS' EXHIBITS :

P1 : COPY OF THE CASH RECEIPT NO.6194 DTD.7.11.2005 ISSUED BY THE 1ST RESPONDENT IN A/C NO.OL-7552 OF THE 1ST PETITIONER.

P2 : COPY OF THE RECEIPT NO.7998 DTD.21.1.2006 ISSUED BY THE 1ST RESPONDENT IN A/C NO.OL-7548 OF THE 2ND PETITIONER.

P3 : COPY OF THE PLAINT I ARC NO.634/13 ON THE FILES OF THE ASSISTANT REGISTRAR, KANAYANNUR FILED BY THE 1ST RESPONDENT.

P4 : COPY OF THE ATTACHMENT NOTICE DTD.11.3.2015 IN EA NO.708/2014 AFFIXED ON THE BUILDING OF THE PETITIONERS BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS :

EXT.R1(a): TRUE COPY OF THE AWARD DATED 08.10.2013 PASSED BY THE ARBITRATOR IN ARC NO. 634/2013.

EXT.R1(b): TRUE COPY OF THE AWARD DATED 18.10.2007 IN ARC NO. 911/2007 PASSED BY THE ARBITRATOR.

EXT.R1(c): TRUE COPY OF THE LETTER DATED 23.01.2015 GIVEN BY THE PETITIONERS TO THE 1ST RESPONDENT BANK.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

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W.P. (C) No. 10025 of 2015 (C)  
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Dated this the 16<sup>th</sup> day of September, 2015.

JUDGMENT

Heard the learned counsel for the petitioners and the learned counsel for the respondent Bank, apart from perusing the record.

2. The petitioners, borrowers from the first respondent Bank, assailed Ext.P4 notice directing them to pay ₹ 6,75,419/-.

3. The learned counsel for the petitioners has submitted that the petitioners, despite their best efforts, could not repay the loan amount owing to stringent financial conditions faced by them. Accordingly, the petitioners have sought the indulgence of this Court for a direction to the respondent Bank to receive from the petitioners the outstanding loan amount in instalments.

4. Before appreciating the submissions of the learned counsel for the respondent Bank, I may have to observe that expansive as the jurisdiction of Article 226 of the Constitution of India is, I am afraid, it does not go to the extent of interdicting the contractual terms, especially in a financial transaction involving public money, so as to compel the respondent Bank to agree for instalments.

5. Be that as it may, being fully aware of the difficulties involved in realising the loan amounts through the process of invidious sale of the property, the learned counsel for the

respondent Bank, to his credit, evidently on instructions, has submitted that the respondent Bank is willing to collect the outstanding loan amount in monthly instalments, provided the petitioners are willing to pay an amount of ₹ 2,00,000/- in the first month and the rest of the amount in twelve equated monthly instalments.

6. The learned counsel for the petitioners has submitted that the petitioners are willing to abide by the scheme of instalments.

In the facts and circumstances, essentially based on the concession made by the learned counsel for the respondent Bank, this Court disposes of the writ petition with a direction to the petitioners to pay the entire outstanding loan amount in instalments, the first instalment being ₹ 2,00,000/- (Rupees two lakhs only) to be paid in one month and the rest of the amount to be paid in twelve equated monthly instalments beginning from 01.11.2015. Needless to observe that, if the petitioners fail to deposit the said amount within the stipulated time, the respondent Bank is at liberty to proceed further without recourse to this Court.

sd/- DAMA SESHADRI NAIDU, JUDGE.

