IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No.10325 of 2015 (M)

PETITIONERS:
----

1. **GEETHA,AGED 48 YEARS,W/O.MUKUNDAN ,
KURUMBRAKKANDIYIL HOUSE,
PERUVAZHIKADAVU,M.I.E.KUNNAMANGALAM P.O,
KOZHIKODE-673571.**

2. **K.R.SREEKUMAR,S/O.RAMANKUTTY NAIR,
KURUMBRAKKANDIYIL HOUSE,
PERUVAZHIKADAVU,M.I.E.KUNNAMANGALAM P.O,
KOZHIKODE-673571.**

**BY ADVS.SRI.P.V.KUNHIKRISHNAN
SRI.P.V.ANOOP**

RESPONDENT(S:
----

1. **KOZHIKODE DISTRICT CO-OPERATIVE BANK,
REPRESENTED BY ITS GENERAL MANAGER,
KALLAI ROAD,CHALAPPRAM,KOZHIKODE-673002.**

2. **THE MANAGER,KOZHIKODE DISTRICT CO-OPERATIVE BANK,
KUNNAMANGALAM BRANCH,KOZHIKODE-673571.**

3. **AUTHORISED OFFICER/SENIOR MANAGER,
KOZHIKODE DISTRICT CO-OPERATIVE BANK,
RECOVERY SECTION,KALLAI ROAD,
CHALAPPRAM,KOZHIKODE-673002.**

4. **THE PRESIDENT,KOZHIKODE DISTRICT CO-OPERATIVE BANK,
KALLAI ROAD, CHALAPPRAM,KOZHIKODE-673002.**

R1-R4 BY SRI.R.SUDHISH,SC,KOZHIKODE DIST.CO.OP. BANK, LTD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

W.P(C) NO.10325/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE POSSESSION NOTICE NO.HO/R.CELL/ SARFAESI/ 2282/KMLM/CLD2475/2012-13 DATED 16.3.2015.

EXT.P2:TRUE COPY OF THE RECEIPT DATED 20.3.2015 SHOWING THE PAYMENT OF RS 80,000/-.

EXT.P3:TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY THE 1ST PETITIONER TO THE 4TH RESPONDENT.

EXT.P4:TRUE COPY OF THE IMPATIENT DISCHARGE SUMMARY DATED 26.11.2013 ISSUED BY THE MEDICAL COLLEGE HOSPITAL,KOZHIKODE TO THE DECEASED MUKUNDAN BEFORE HIS DEATH.

EXT.P5:TRUE COPY OF THE DEATH CERTIFICATE OF MUKUNDAN ISSUED BY THE KOZHIKODE CORPORATION DATED 28.1.2015.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.10325 of 2015 (M)

..

Dated this the 31st day of March, 2015

JUDGMENT

The deceased husband of the 1st petitioner and the 2nd petitioner were guarantors to a loan advanced by the respondent Bank. The borrower defaulted in repayment of the same and 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', against the petitioner. Ext.P1 is the possession notice issued under Section 13(2) of the SARFAESI Act to the petitioners in that regard. In the writ petition, the petitioners impugn the steps initiated by the respondent Bank for recovery of the loan amounts.

2. Heard Sri.P.V.Kunhikrishnan, learned counsel appearing for the petitioners and Sri.R.Sudhish, learned Standing counsel appearing for the respondents.

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 petitioners is to permit them to remit the total amount 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 amount outstanding in respect of the loan availed from the respondent Bank is stated to be Rs. ₹ 1,11,633/- together with accrued interest. Accordingly, if the petitioners pay the said amount of ₹Rs. 1,11,633/- together with accrued interest in ten equal and successive monthly instalments commencing from 20.04.2015; then, the recovery steps initiated against them by the respondent bank shall be kept in abeyance.

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.

iii. There will be a further direction to the respondent Bank to consider Ext.P3 representation preferred by the 1st petitioner during the pendency of the period of installment referred to above. If the respondent Bank decides to extend any relief or other concession to the petitioners based on the said representation, then, the petitioners will be liable to remit only the reduced amount so permitted by the respondent Bank in pursuance to this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/31/03/