IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).NO. 11923 OF 2015 (M)

PETITIONER(S):

1. M.A.NISSAR, SON OF ABDUL JABBAR,
   VELOCOTTU HOUSE, KUMARANALLOOR P.O., KOTTAYAM

2. SUNNY M.C., MANGAKANDATHIL VEETTIL,
   MARYTHURATHU KARAYIL, AYAMANAM VILLAGE, KOTTAYAM.

BY ADV. SRI.V.S.AFSAL KHAN

RESPONDENT(S):

1. THE KOTTAYAM URBAN CO-OPERATIVE BANK.NO.421
   REPRESENTED BY ITS GENERAL MANAGHER
   THIRUNAKKAKARA, KOTTAYAM-686001

2. THE SECRETARY TO GOVERNMENT,
   PUBLIC WORKS (G) DEPARTEMENT,
   THIRUVANANTHAPURAM-695001

BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA
BY SRI.SURIN GEORGE IYPE,SC,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF THE WORK ORDER NO.DB10/1516/05 DATED 26.11.09 OFFICE OF P.W.D ROADS AND BRIDGES, THIRUVANANTHAPURAM

EXT.P2: A TRUE COPY OF THE PETITION DATED 22.03.2013 FILED BY THE 1ST PETITIONER BEFORE THE GOVT.OF KERALA

EXT.P3:A TRUE COPY OF THE LETTER NO.13520/GI/12/PWD DATED 17.10.2014 OF PUBLIC WORKS (G) DEPARTMENT

EXT.P4: A TRUE COPY OF THE STATEMENTS OF ACCOUNT FOR THE PERIOD OF 6.4.2011 TO 3.11.2013 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: A TRUE COPY OF THE AWARD DATED 24.07.2013 IN A.R.C.NO.1559/2013

EXT.P6: A TRUE COPY OF THE NOTICE NO.LRS 2212/14-15 DATED 7.8.2014 UNDER SARFAESI ACT ISSUED BY THE 1ST RESPONDENT BANK

EXT.P7: A TRUE COPY OF THE REPRESENTATION DATED 10.03.2015 FILED BY THE 1ST PETITIONER TO THE 1ST RESPONDENT

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11923 OF 2015

Dated this the 9th day of April, 2015

J U D G M E N T

The petitioner, who had availed of an overdraft facility 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. 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 on behalf of the petitioner as also the learned Standing counsel appearing on behalf of 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 petitioner is to permit him to remit the balance amounts outstanding to the bank in easy instalments. Taking into account the plea of financial hardship raised by the petitioner, I

dispose the writ petition with the following directions:-

(i) The total amount availed by the petitioner under the overdraft facility as of today, is stated to be an amount of Rs.23,77,182/- as against an overdraft limit of Rs.18,00,000/-. Counsel for the respondent bank would submit that unless the petitioner remits something more than the overdue interest amount, the respondent bank will not be in a position to consider the regularisation of the overdraft facility. Taking note of the said submission of the counsel for the respondent bank, I direct that if the petitioner pays an amount of Rs.7,50,000/- to the respondent bank in four equal and successive monthly instalments commencing from 30.04.2015, and complies with the other formalities insisted by the respondent bank for continuing with the overdraft facility, then further proceedings for recovery of loan amounts from the petitioner shall be kept in abeyance.

(ii) It is made clear that, if the petitioner commits a default in respect of any of the instalments, 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

mns