IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 16055 of 2011 (F)

OA.NO. 1154/1999 OF DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONER(S):

1. M/S.NEOLITE BUILDERS PVT. LTD.,
T.C.NO.15/42 (2), DIAMOND HILL, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 010,
REPRESENTED BY ITS DIRECTOR G.PADMAKUMAR.

2. P.GOPALAKRISHNA PILLAI,
MANAGING DIRECTOR, M/S.NEOLITE BUILDERS PVT. LTD.,
T.C.NO.15/42, DIAMOND HILL, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 010.

3. G.PADMAKUMAR, DIRCTOR,
M/S.NEOLITE BUILDERS PVT. LTD., T.C.NO.15/42,
DIAMOND HILL, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 010.

BY ADVS.SRI.GEORGE POONTHOTTAM
SRI.N.SASI

RESPONDENT(S):

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE, NEW DELHI-110 001.

2. HDFC BANK, EAST FORT, 1ST FLOOR,
KARIMPANAL ARCADE, THIRUVANANTHAPURAM-695 023.

3. THE DEBT RECOVERY TRIBUNAL, 5TH FLOOR,
KSHB BUILDING, KADAVANTHARA, KOCHI-36.

4. THE DEBT RECOVERY APPELLATE TRIBUNAL,
4TH FLOOR, INDIAN BANK CIRCLE OFFICE,
55 ETHIRAJ SALAI, CHENNAI-600 008.

R1 BY ADV. SRI.N.NAGARESH, ASG OF INDIA
SRI.SAJAN MANNALI, CGC
R2 BY ADVS. SMT.BABITHA THAMBI
SRI.LEO GEORGE
SRI.K.N.SASIDHARAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.16055/2011

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE JUDGMENT DATED 5/7/2002 IN ORIGINAL APPLICATION NO.1154/1999.

P2 COPY OF THE JUDGMENT DATED 13/1/2003 IN O.P.NO.594/2003

P3 COPY OF THE ORDER DATED 11/11/05 ORIGINAL APPLICATION NO.1154/1999

P4 COPY OF THE ORDER DATED 12/1/07 RA-31/2006(OA 1154/1999, DRT, ERNAKULAM)

P5 COPY OF THE DEMAND NO.CT/EEGREM/SECNOTICE/65/2010 DATED 25/9/2010

P6 COPY OF THE REPLY DATED 11/10/10

P7 COPY OF THE COMMUNICATION NO.CT/RMU/NEOLITE BUILDERS/SEC 65/2010 DATED 23/10/2010.

P8 COPY OF THE COMMUNICATION NO.CT/NEOLITE/SEC 65/TP5/252/2011 DATED 16/2/11

P9 COPY OF THE JUDGMENT IN WP(C).NO.7383/2011

P10 COPY OF THE UNDER RULE 83 OF THE SECOND SCHEDULE TO THE INCOME TAX ACT 1961 DATED 21/2/11

P11 COPY OF THE STATEMENT OF ACCOUNTS AS ON 30/9/2012

P12 COPY OF THE STATEMENT OF ACCOUNTS AS ON 2/7/2010

P13 COPY OF THE SALE PROCLAMATION NOTICE NO.2213 ISSUED BY THE DEBTS RECOVERY TRIBUNAL

P14 COPY OF THE STATEMENT OF INTEREST CALCULATION

P15 COPY OF APPLICATION NO.1154/1999 FILED BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM WITHOUT DOCUMENTS.

P16 COPY OF THE RECEIPT EVIDENCING THE PAYMENT OF RS.12,00,000/-

P17 COPY OF THE ORDER DATED 3/3/2015 IN MC.NO.430/2014 PASSED BY THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS:

R2(A) COPY OF THE PARTICULARS OF THE ACCOUNT OF THE FIRST PETITIONER.

R2(B) COPY OF THE ACCOUNT LEDGER PERTAINING TO THE ACCOUNT OF THE FIRST PETITIONER DATED 29/2/2012.

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R2(C) COPY OF THE STATEMENT OF ACCOUNT PERTAINING TO THE ACCOUNT OF THE FIRST PETITIONER FOR THE PERIOD FROM 30/9/2012

R2(D) COPY OF THE STATEMENT OF ACCOUNT PERTAINING TO THE ACCOUNTS OF THE PETITIONERS AS PER THE DECREE/FINAL ORDER

R2(E) COPY OF THE STATEMENT OF THE THIRD PETITIONER RECORDED IN DRC 2213 BEFORE THE RECOVERY OFFICER, DRT.

R2(F) COPY OF THE DETAILED BALANCE DUE STATEMENT SHOWING THE AMOUNT DUE TO THE SECOND RESPONDENT BANK FROM THE PETITIONERS PURSUANT TO EXHIBIT P3.

/TRUE COPY/

P.A.TO JUDGE

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C.K.ABDUL REHIM, J.

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W.P.(C). No. 16055 OF 2011

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Dated this the 7th day of April, 2015

JUDGMENT

Issue involved in this writ petition has got a chequered history. M/s Lord Krishna Bank Ltd. had filed an original application before the 3rd respondent Tribunal, seeking realization of amounts due from the petitioners under a loan transactions (Over Draft facility). The said application filed before the Tribunal under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act was initially decreed through Ext.P1 order passed on 5th July, 2002. O.A.No.1154/1999 was allowed by permitting the Bank to realize a sum of Rs.17,20,878.95 along with future interest with quarterly rests. The said order was passed on an ex-party basis. The petitioners submitted application before the 3rd respondent Tribunal to set aside Ext.P1. But the Tribunal imposed very stringent conditions. Challenging the order passed by the Tribunal in this regard the petitioners 1 and 2 have approached this court in O.P.No.594/2003. In Ext.P2 judgment this court ordered to set aside Ext.P1 order and directed fresh disposal of the original application, subject to condition of the petitioners remitting a sum of Rs. 1,00,000/- to the Bank in two instalments and on payment of a cost of Rs.1,000/-. Consequently O.A.No.1154/1999 was restored on the files of the 3rd respondent Tribunal and it was disposed afresh through Ext.P3 final order dated 11.11.2005, by allowing the Bank to recover a sum of Rs.17,20,878.95 along with future interest on the principal amount after crediting the amount of Rs.1,00,000/- already paid based on Ext.P2 judgment. Ext.P3 order of the 3rd respondent Tribunal was taken up in appeal by the petitioners before the 4th respondent -Appellate Tribunal. The appeal was dismissed and the order of the 3rd respondent Tribunal was confirmed through Ext.P4 order, dated 12.1.2007. In the meanwhile, the Lord Krishna Bank got amalgamated with the 2nd respondent Bank and the 2nd respondent have initiated proceedings under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act). Challenging the notices issued under Section 13 of the SARFAESI Act the petitioners 1 and 2 have approached this court in a writ petition filed as W.P.(C)No.7383/2011. In Ext.P9 judgment the writ petition was dismissed without prejudice to rights of the petitioners therein to invoke statutory remedy against the steps initiated under SARFAESI Act. This court observed that there exists a concluded decree against the petitioners and therefore the dispute with respect to correctness of the amounts demanded under SARFAESI Act cannot be resolved in the said writ petition. In the meanwhile the 'Recovery Officer' attached to the 3rd respondent Tribunal had initiated steps for execution of Ext.P3 order, based on the Certificate of Debt issued by the 3rd respondent Tribunal. It is challenging Exts.P3 and P4 orders of the 3rd respondent Tribunal and the Appellate Tribunal, this writ petition is filed.

2. Contentions raised against Exts.P3 and P4 are mainly based on the disputes relating to correctness of the amounts claimed by the 2nd respondent Bank. This court is not in a position to adjudicate such disputes in exercise of the power vested under Article 226 of the Constitution of India, especially when the order issued by the 3rd respondent had been confirmed by the Appellate Authority. The petitioners had placed strong reliance on the amount of arrears in certain notices/statement of accounts issued by the Bank, in order to content that the arrears demanded in the original application

was not true and correct. This court is not acting as appellate or revisional authority with respect to the findings contained in Exts.P3 and P4. Learned counsel for the petitioners contended that fraud has been committed while filing the original application and in obtaining Ext.P3 order. But contention raised on behalf of the 2nd respondent is that the statements relied on by the petitioners had reflected only the arrears due till the date on which the transaction was declared as a non-performing asset and the interest accrued thereafter was kept in a separate account and the same is not reflected in the statements. However, dispute with respect to correctness of the amount of arrears cannot be taken for adjudication and this court cannot arrive at any conclusion that a fraud has been committed by the 2nd respondent Bank. Hence the grounds agitated against Exts.P3 and P4 orders cannot be accepted.

3. It is noticed that, during the pendency of the writ petition the Recovery Officer had proceeded with coercive steps for the sale of the mortgaged properties. Ext.P13 is the proclamation of sale issued in this regard. Through an interim order passed on 23.7.2013 further steps for the sale was

stayed, subject to condition of the petitioners depositing a sum of Rs.12 lakhs within 10 days thereof. It is conceded that the petitioners had remitted the said amount in compliance with the interim order. It is now contended that despite existence of such an interim order the 2nd respondent bank had proceeded further under the SARFAESI Act and steps contemplated under Section 14(1) was instituted before the Chief Judicial Magistrate's Court, Thiruvananthapuram. Ext.P17 is an order passed by the said court appointing an Advocate Commissioner to take over of possession of the secured assets. It is pointed out that even though the interim order of this court was brought to notice of the Chief Judicial Magistrate, it was observed that this court had stayed only the proceedings initiated by the Recovery Officer and it will not in any manner restrain steps initiated under the SARFAESI Act. The petitioners inter alia seek stay of all the proceedings now being pursued under the SARFAESI Act.

4. As already observed, this court finds no merit in the grounds raised seeking interference with Exts.P3 and P4 orders. There is no reason established warranting interference with the steps initiated by the Recovery Officer in execution of

the decree passed by the 3rd respondent Tribunal, which is already confirmed in appeal. Therefore the writ petition deserves no merit and the same is liable to be dismissed.

5. However, learned counsel for the petitioners made an appeal to this court to show indulgence in permitting payment of the balance amount outstanding, in installments, in order to save the secured assets from being sold. This court takes notice of the fact that, pursuant to the interim order passed on 23-07-2013 the petitioner had already remitted a sum of Rs.12,00,000/-. According to learned counsel appearing for the respondent Bank the net balance outstanding as on 31-03-2015 is around Rs.23.75 lakhs. This court is of the considered opinion that it is equitable to grant a chance to the petitioners to rescue their properties from being sold, by making payment of the balance amount within a reasonable time.

6. Therefore, while dismissing the writ petition, the petitioners are permitted to remit the entire balance outstanding under the Recovery Certificate issued by the 3rd respondent Tribunal based on Ext.P3 order, in 4 equal monthly installments falling due on or before 15th of May 2015 and on

or before the 15th day of 3 succeeding months. If the amount is remitted promptly in accordance with the installment facility granted as above without any default, all coercive steps initiated by the Recovery Officer attached to the 3rd respondent Tribunal for sale of the mortgaged properties shall be kept in abeyance. So also the proceedings initiated under the SARFAESI Act pending before the Chief Judicial Magistrate Court, Thiruvananthapuram under Section 14 (1) including Ext.P17 order shall also be kept pending till such time. It is further made clear that the petitioners will be liable to make payment of interest accruing on the proportionate amounts of balance during period of the installment facility.

C.K.ABDUL REHIM, JUDGE

SKV/AMG