IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 16689 of 2008 (J)

PETITIONERS :
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1. M.J.BETTY, MANAGING PARTNER,
   MESSRS METRO SILKS & SAREES, METRO BAZAR, ANGAMALY.

2. M.T.TOMY, PROPRIETOR, MESSRS METRO
   TEXTILES, METRO BAZAR, ANGAMALY.

3. M.J.TOMY, MANAGING PARTNER,
   METRO TRADERS, METRO BAZAR, ANGAMALY.

4. M.J.BETTY, MUNDAN HOUSE,
   ANGAMALY P.O.

   BY ADV. DR.GEORGE ABRAHAM

RESPONDENTS :
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1. UNION BANK OF INDIA, H.O.239,
   VIDHAN BHAVAN MARG, MUMBAI - 21
   REPRESENTED BY ITS CHAIRMAN.

2. REGIONAL MANAGER, UNION BANK OF INDIA,
   UNION BANK BHAVAN, P.B.NO.3667, M.G.ROAD
   KOCHI-35.

3. CHIEF MANAGER & AUTHORISED OFFICER,
   UNION BANK OF INDIA, UNION BANK BHAVAN, P.B.NO.3667
   M.G.ROAD, KOCHI-35.

4. BRANCH MANAGER, UNION BANK OF INDIA,
   ANGAMALY, ANGAMALY.

5. DEPUTY GENERAL MANAGER,
   UNION BANK OF INDIA, UNION BANK BHAVAN, P.B.NO.3667
   M.G.ROAD, KOCHI-35.

   R1 TO 5 BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16689 of 2008 (J)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF RENEWAL OF LOAN AVAILED BY THE 1ST PETITIONER

EXT.P2 : COPY OF RENEWAL OF LOAN AVAILED BY THE 2ND PETITIONER

EXT.P3 : COPY OF RENEWAL OF LOAN AVAILED BY THE 3RD PETITIONER

EXT.P4 : COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT DATED 1.8.2007

EXT.P5 : COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT DATED 13.8.2007

EXT.P6 : COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER DATED 3.9.2007

EXT.P7 : COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT TO THE 2ND PETITIONER DATED 3.9.2007

EXT.P8 : COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT TO THE 3RD PETITIONER DATED 3.9.2007

EXT.P9 : COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT TO THE 4TH PETITIONER DATED 3.9.2007

EXT.P10 : COPY OF THE OBJECTION SUBMITTED BY THE PETITIONERS DAETD 13.9.2007

EXT.P11 : COPY OF THE JUDGMENT IN W.P.(C)27563/07

EXT.P12 : COPY OF THE ORDER ISSUED BY THE RESPONDENTS DATED 17.11.2007

EXT.P13 : COPY OF THE COMMUNICATION ISSUED BY THE RESPONDENTS DATED 14.2.2008

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.16689 of 2008

Dated this the 10th day of February, 2015

J U D G M E N T

The petitioners had availed financial assistance from the 1st respondent Bank for various businesses conducted by them. The 1st petitioner had availed an amount of ₹56 lakhs for a Textile Shop, the 2nd petitioner had availed a facility of ₹10 lakhs, the 3rd petitioner had availed a facility of ₹23 lakhs and the 4th petitioner had availed a Housing Loan of ₹12 lakhs. According to the petitioners, due to differences of opinion that arose between the petitioners and the Branch Manager of the 1st respondent, proceedings were initiated against them under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). The accounts were declared as Non Performing Assets ('NPA' for short) and notices were issued under Section 13(2) of the Act on 01.08.2007. The petitioners challenged the said action before this Court in W.P.(C).No.27563/2007. By Ext.P11 judgment, this Court considered the legality of the action initiated by the 1st respondent and found that, the entire action was arbitrary. Therefore, the action was set aside. It has also been declared in Ext.P11 judgment that, the action of the 1st respondent Bank in classifying the accounts of the petitioners as NPA was illegal and arbitrary. This Court further directed that a Superior Officer of the

Bank shall re-examine the question whether the accounts of the petitioners were liable to be classified as NPA strictly following the guidelines of the Reserve Bank of India. Accordingly, the matter was reconsidered and by Ext.P12, the 5th respondent has found that the initial action of the Bank in declaring the accounts of the petitioners as NPA was justified. Pursuant to Ext.P12, petitioners were also issued with Ext.P13 notice to show cause why their names should not be communicated to the Reserve Bank of India for being notified in the list of chronic defaulters. This writ petition was filed by the petitioner in the said circumstances challenging Ext.P12. It is submitted by the counsel for the petitioner that, no further action was pursued on the basis of Ext.P13.

2. According to Dr.George Abraham who appears for the petitioners, this Court has held in Ext.P7 judgment that the action of the 1st respondent Bank in treating the petitioners' accounts as NPA was arbitrary. The respondents have had no case at any time that there were other materials on the basis of which, the petitioners' accounts were liable to be treated as NPA. What the 5th respondent has done in Ext.P12 is to search out other materials to support the action that has been found to be arbitrary by this Court in Ext.P11 judgment. Since this Court has held that the said action was arbitrary and illegal in Ext.P11, which finding has become final and binding, with Writ Appeal No.2716/2007 filed challenging the said judgment being

dismissed, it is not open to the 5th respondent to clothe the said action with a cloak of legality. Ext.P12, in so far as it reiterates the earlier illegal action, is according to the counsel arbitrary and liable to be set aside.

3. A counter affidavit has been filed on behalf of the respondents. It is stated in paragraph 3 of the counter affidavit that, the Bank has already filed O.A.No.245/2008 before the Debt Recovery Tribunal, Ernakulam for recovery of the amounts due from the petitioners. According to the counter affidavit, the accounts were classified as NPA for the reason that, the outstanding balance as on 31.12.2006 and 90 days thereafter exceeded the sanctioned limit and there was no credit in the accounts. It is reiterated that, the action initiated by the Bank was perfectly legal. According to the counter affidavit, this Court had granted liberty to a Superior Officer of the Bank to consider the matter afresh and to take a fresh decision. Such a decision had been taken even during the pendency of the Writ Appeal No.2716/2007 filed by the Bank. It was for the said reason that the said Writ Appeal was dismissed as infructuous. According to the counter affidavit, there are absolutely no grounds for any interference with Ext.P12. Adv.Sri.A.S.P.Kurup appears for the respondents.

4. Heard. A perusal of Ext.P12 order shows that, the 5th respondent has gone into the documents relating to the accounts of the petitioners in detail. He has found that the outstanding balance in

the accounts as on 31.12.2006 had exceeded the sanctioned limit/ drawing power and that there was no sufficient credit in the accounts of the petitioners. The 5th respondent has sought to justify the action of the Bank in declaring the accounts of the petitioners as NPA on the basis of the above fact. However, it is not in dispute that, action was initiated in respect of the accounts only on 31.03.2007. Though the respondents had contested the writ petition filed by the petitioners before this Court, I do not find that that the above facts had been brought to the notice of this Court at the time of rendering Ext.P11 judgment. Therefore, the impression that one gets from a reading of Ext.P12 is that, the 5th respondent was only trying to justify the action taken against the petitioners in spite of the fact that, the said action had been held to be arbitrary by this Court. The wording of Ext.P12 also supports the above conclusion. What has been stated in Ext.P12 by the 5th respondent is that, he was confirming the action classifying the accounts as NPA. The 5th respondent has while entering the said finding, lost sight of the fact that, this Court had declared the said action to be arbitrary. The relevant observation of this Court in Paragraph 28 of Ext.P11 judgment reads as follows :

> "In the result, I declare that the action of the 1st respondent Bank in classifying the accounts of the petitioners as NPA is illegal and arbitrary and a superior officer of the Bank shall re-examine the question whether the accounts of the petitioners are liable to be

> classified as NPAs strictly following the guidelines issued by the Reserve Bank of India."

5. In the above context, the observation of this Court in Paragraph 23 of the judgment is also relevant, which is extracted hereunder :

> "In this context I should refer to the judgment of the Apex Court in Mardia Chemicals v. Union of India {2004 (2) KLT 273 (SC)} in which the question as to whether it is on the whims and fancies of the financial institutions to classify the assets as non-performing assets, has been dealt with in paragraph 37. It has been held that as a matter of fact a policy has been laid down by the Reserve Bank of India providing guidelines in the matter of declaring an asset as a non-performing asset and that is quite evident from the guidelines laid down by the Reserve Bank of India laying down the terms and conditions and circumstances in which the debt is to be classified as non-performing asset as early as possible. Referring to the said guidelines the court found that there are guidelines for treating the debt as a non-performing asset. I am afraid that the argument raised before the Apex Court has come true in this case."

The above observations are a pointer to the attitude of the Bank towards the petitioners. At the time of initiation of action against them viewed in the above background, it has to be held that the manner in which the whole issue has been considered in Ext.P12 is unsatisfactory.

6. As already noticed above, the Bank has approached the Debt Recovery Tribunal by filing O.A.No.245/2008 seeking recovery of the amount due from the petitioners. According to the counsel for the petitioners, the said case is pending and as per orders in the said O.A,

substantial portion of the amounts demanded have already been paid. S.A.No.235/2009 is also another case that is pending in relation to the recovery of the very same amount. Since the said proceedings are progressing before the Debt Recovery Tribunal, it is sufficient that the parties are left to work out their remedies in the said proceedings.

In view of the above, this writ petition is disposed of leaving the parties to work out their remedies in O.A.No.245/2008 and S.A.No.235/2009 pending before the Debt Recovery Tribunal. Suffice it to order that, no further action shall be pursued against the petitioner on the basis of Ext.P13.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV