IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 15TH DAY OF MAY 2015/25TH VAISAKHA, 1937

WP(C).No. 14507 of 2015 (K)

PETITIONER:

K.T.UMMAYYAKKUTTY AGED 64 YEARS,
D/O. SAIDALIKKUTTY, KACHERITHODUVIL HOUSE,
THEKKEKKALAM, POST MEENADATHUR, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENTS:
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1. THE TIRUR URBAN CO OPERATIVE BANK LTD., HEAD OFFICE, POST TIRUR, PIN-676 101 REPRESENTED BY ITS GENERAL MANAGER.

2. THE MANAGER. TIRUR URBAN CO-OPERATIVE BANK LTD., AMBALATHINGAL BRANCH, POST THANALUR, TIRUR TALUK, MALAPPURAM DISTRICT-676 307.

3. THE AUTHORIZED OFFICER, TIRUR URBAN CO-OPERATIVE BANK LTD., HEAD OFFICE, POST TIRUR, PIN-676 101.

R BY SRI.M.SASEENDRAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 : COPY OF THE RELEVANT PAGES OF THE LOAN PASS BOOK DTD.23.4.2010.

P2 : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DTD.13.2.2015.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

rv

ALEXANDER THOMAS, J.

W.P.(C) No. 14507 of 2015 (K)

Dated this the 15th day of May, 2015.

JUDGMENT

It is averred by the petitioner that she had availed a term loan from the 2nd respondent Branch of the first respondent, Tirur Urban Co-Operative Bank Limited for an amount of ₹5,00,000/- which the petitioner has to repay in 60 equal monthly instalments of Rs.8800/- each, that she has deposited the title deed of her residential property as security to the aforesaid loan, and that she was prompt in repaying the monthly instalments and she has paid substantial amount towards the loan. Since her husband fell ill due to renal problem, the petitioner could not pay the instalments towards the aforesaid loan, which the respondent Bank classified the aforesaid loan as NPA and had started to recover the dues by invoking the provisions under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'SERFAESI Act') and took symbolic possession of the property. On receipt of the possession notice, the petitioner has made an earnest request before the respondent Bank to permit her to clear off the entire dues in instalments. Instead of considering her request, the respondent Bank had approached the Chief Judicial Magistrate, Manjeri and the Advocate Commissioner appointed by the aforesaid court visited the property and this resulted in Ext.P2 proceedings. It is also pointed out that the property mentioned in Ext.P2 is the only property of the petitioner and she is residing there with her family, and that if the impugned proceedings are enforced, she will be evicted from the residential house which will cause untold miseries to her and her family. Hence this writ petition with the following prayers:

1. Call for the records leading upto Ext.P2 notice and quash the proceedings in pursuant to the same by issuing a writ of certiorari or any other appropriate writ, order or direction.

2. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to permit the petitioner to clear off his loan account by availing OTS scheme after deducting the penal interest and other penal charges calculated in the loan account.

2. Heard Sri. C.M. Mohammed Iquabal, the learned counsel for the petitioner and Sri. M. Saseendran, the learned Standing Counsel appearing for the respondents.

3. The learned Standing Counsel for the respondents submits that the petitioner could be given instalment facility for clearing the entire liability due to the respondent Bank, and that the total outstanding liability due on this loan account of the petitioner as on 13.05.2015 is ₹ 3,24,876.

4. The learned counsel for the petitioner submits that eight instalments may be granted to the petitioner to clear the entire liability.

5. Having heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, it is ordered in the interests of justice that the petitioner is at liberty to clear the entire liability due to the respondent Bank in five equal monthly successive instalments starting from 15.06.2015. This shall be subject to a further condition that the penultimate and the final instalment as aforesaid should be sufficient enough to

wipe off not only the aforesaid liability but also the future interest until then. It is further made clear that if the petitioner fails to comply with the aforesaid direction and fails to pay either of the instalments, the benefit of this direction will stand automatically vacated, without any further orders from this Court. Subject to these directions, the impugned proceedings will be kept in abeyance. The respondent Bank will give the requisite statement of accounts of the loan to the petitioner within one week from today.

With the above observations and directions, the writ petition stands disposed of.

sd/- ALEXANDER THOMAS, JUDGE.

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