IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No.15166 of 2014 (U)

PETITIONER :-

SUBHASHITHAN.N, AGED 70 YEARS,
S/O.NEELAKANDAN NADAR,
KUNDAMATH CHUNDUVILAKATHU VEEDU, OTTASEKHARAMANGALAM,
KURAVARA DESOM.

BY ADVS.SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP

RESPONDENTS :-

1. AUTHORIZED OFFICER,
THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD,
HEAD OFFICE, THIRUVANANTHAPURAM-695001.

2. K.SUKUMARAN,
'ANIZHAM', KURAVARA, OTTASEKHARAMANGALAM.P.O
PIN-695125.

R1 BY ADV. SRI.T.R.HARIKUMAR, SC, THIRUVANANTHAPURAM DIST.CO.OP.BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15166 of 2014 (U)

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 COPY OF SALE NOTICE DATED 9.5.2014 INFORMING THE TENDER SALE ON 18.6.2014.

EXT.P2 COPY OF SALE NOTICE PUBLISHED IN KERALA KAUMUDI DAILY ON 9.5.2014.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.15166 of 2014

Dated this the 6th day of October, 2015

JUDGMENT

The property owned by the petitioner having an extent of 4 Ares in Survey No.49/14 of Ottasekharamangalam Village was furnished as security in respect of the consumption loan availed by the 2nd respondent from the Thiruvananthapuram District Co-operative Bank. When the monthly instalments were defaulted proceedings were initiated under the SARFAESI Act which resulted in Exts.P1 and P2 sale notices. At that juncture the petitioner approached this Court in this writ petition seeking a writ of certiorari to quash Exts.P1 and P2 to the extent the property owned by him is put for sale. The petitioner has also sought for a writ of mandamus commanding the 1st respondent to allow him to pay the entire outstanding in 20 equal monthly instalments commencing from 1.7.2014.

2. By order dated 16.6.2014 this Court ordered that the sale scheduled to be held on 18.6.2014 shall stand adjourned on the petitioner remitting ₹10,000/- on or before 18.6.2014.

3. Today when the case was taken up for further consideration the learned counsel for the petitioner would submit that in terms of the interim order granted by this Court the petitioner has deposited ₹10,000/- and that he may be granted an opportunity to clear the entire dues in monthly instalments.

4. The learned Standing Counsel for the 1st respondent Bank would submit that, the total liability outstanding in respect of the consumption loan availed by the 2nd respondent in which the property owned by the petitioner was furnished as security would come around ₹2,50,000/-.

5. I heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the 1st respondent Bank.

6. The petitioner is not disputing the fact that the property owned by him is furnished as security for the consumption loan availed by the 2nd respondent. As the petitioner stood as surety for the consumption loan availed by the 2nd respondent and offered his property as security, the liability of the petitioner and that of the 2nd respondent borrower is joint and several. Therefore, in view of the default committed by the 2nd respondent in payment of the monthly instalments, the 1st respondent bank is perfectly justified in proceeding against the property offered by the petitioner as security. Since the petitioner has expressed his readyness to pay the total amount outstanding in monthly instalments, this Writ Petition is disposed of in the following manner:-

1. Within two weeks from the date of receipt of a certified copy of this judgment the 1st respondent shall furnish the petitioner a statement showing the total amount outstanding in respect of the loan transaction in question.

2. On receipt of such statement, the petitioner shall remit the total amount outstanding in 12 equal monthly instalments commencing from **2.11.2015**.

3. If the petitioner is remitting the aforesaid instalments without any default, no recovery proceedings based on Exts.P1 and P2 shall be taken against his property.

4. In case of any default on the part of the petitioner in remitting any one of the monthly instalments, it would be open to the 1st respondent Bank to proceed against the security offered by the petitioner.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj