IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 15584 of 2015 (W)

PETITIONER:

K.V. AYYAPPAN AASARI, S/O.KUMARAVEL,
PROPRIETOR, KANNAN JEWELLERY,
POST OFFICE JUNCTION, PARASSALA,
RESIDING AT KUMARA RAJA NIVAS,
PEROOR VILAKOM, KARUMANOOR,
PARASSALA P.O., THIRUVANANTHAPURAM, PIN- 695 502.

BY ADV. SMT.SHIPNA VARGHESE.

RESPONDENTS:
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1. THE AUTHORISED OFFICER/CHIEF MANAGER,
   (UNDER SARFAESI ACT),
   STATE BANK OF TRAVANCORE, PARASSALA -695 502.

2. THE DEPUTY GENERAL MANAGER,
   (GENERAL ADMINISTRATION), STATE BANK OF TRAVANCORE,
   HEAD OFFICE, THIRUVANANTHAPURAM-695 001.

BY ADV. SRI.JAWAHAR JOSE, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 15584 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT P1:-	TRUE COPY OF NOTICE DATED 27/02/2012 ISSUED BY THE 1ST RESPONDENT.
EXT P2:-	TRUE COPY OF NOTICE DATED 28/04/2014 ISSUED BY THE BANK.
EXT P3:-	TRUE COPY OF THE ORDER IN MC NO. 215/2015 DATED 13/02/2015 OF THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.
EXT P4:-	TRUE COPY OF THE REPRESENTATION DATED 16/03/2015 SUBMITTED TO THE 2ND RESPONDENT.
EXT P5:-	TRUE COPY OF THE LETTER DATED 28/02/2015 ISSUED BY THE 2ND RESPONDENT.
EXT P6:-	TRUE COPY OF THE NOTICE DATED 12/03/2015 ISSUED BY THE ADVOCATE COMMISSIONER.

RESPONDENT'S ANNEXURES:-

ANNEXURE A	COPY OF THE NOTICE DATED 15/10/2007 ISSUED BY THE BANK UNDER THE SARFAESI ACT.
ANNEXURE B	COPY OF THE JUDGMENT DATED 05/06/2008 IN WP(C).NO.10934/2008.
ANNEXURE C	COPY OF THE JUDGMENT DATED 28/01/2013 IN WP(C).NO.22877/2008.
ANNEXURE D	COPY OF THE NOTICE DATED 14/06/2014 ISSUED BY THE BANK UNDER THE SARFAESI ACT.
ANNEXURE E	COPY OF THE ACCOUNTS STATEMENT OF THE PETITIONER LOAN.
ANNEXURE F	COPY OF THE AWARD DATED 09/03/2014 OF THE LEGAL SERVICE AUTHORITY, NEYYATTINKARA.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.15584 of 2015

Dated this the 9th day of June, 2015

<u>J U D G M E N T</u>

The petitioner availed a credit facility from the respondent Bank. Due to financial crisis, he could not repay the loan in time. Hence the Bank initiated 'SARFAESI' proceedings against the petitioner. The petitioner challenges the same in this writ petition.

2. The learned counsel for the petitioner submits that, the petitioner is prepared to honour the payment as directed by the Bank in Ext.P2 dated 28.4.2014. Ext.P2 was issued directing the petitioner to pay ₹5 lakhs on or before 31.03.2014, but he could not pay the same before 31.03.2014. It is submitted that he is prepared to pay ₹5 lakhs with reasonable interest to settle the entire liability.

3. The learned Standing Counsel for the Bank strongly opposed the prayers and submits that, the petitioner is a chronic defaulter and he availed many opportunities to settle the liability and he has conveniently used the same to drag the payment. Therefore, he does not require any indulgence at this point of time.

4. Essentially the petitioner has raised a question regarding liability, which is more than ₹10 lakhs. This Court cannot direct the Bank to settle the account by accepting amount referred in Ext.P2. Admittedly, period is over.

5. Considering the fact that, the petitioner is prepared to settle

the entire amount, this writ petition is disposed of with the following directions :

1. The petitioner shall approach the 2nd respondent with a request for settlement of the liability within a period of one week from the date of receipt of a copy of this judgment. Thereafter, the 2nd respondent shall consider the same, after hearing the petitioner, within a further period of one month.
2. The petitioner shall deposit ₹5,00,000/- (Rupees Five lakhs only) within one month from today.
3. To facilitate the petitioner to comply with the above directions, all coercive steps shall be deferred for a period of six weeks.
4. If the petitioner has further dispute, he is free to approach the Debt Recovery Tribunal for adjudicating dispute on liability.
5. If the petitioner fails to comply with the above directions, the Bank is at liberty to move an application before the Chief Judicial Magistrate Court for an earlier hearing.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV