IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY,THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WP(C).No. 15874 of 2015 (H)

PETITIONER : -

ROULABI, AGED 48 YEARS,
D/O. RAHIM, PALLIKAROTTU HOUSE,
ERUMATHALA P.O., ALUVA TALUK,
ERNAKULAM DISTRICT.

BY ADVS.SRI.E.C.POULOSE
SMT.BOBBY RAPHEAL.C

RESPONDENTS : -
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1. ALUVACO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. E-87, ALUVA, ERNAKULAM DISTRICT - 683 101, REPRESENTED BY ITS SECRETARY.

2. THE RECOVERY OFFICER, ALUVACO-OPERATIVE AGRICULTRUAL AND RURAL DEVELOPMENT BANK LTD NO. E-87, ALUA, ERNAKULAM DISTRICT - 683 101.

R1 BY ADV.SRI.SHAJI CHIRAYATH
R1 BY ADV.SMT.JIJI M. VARKEY
R1 BY ADV.SMT.SAVITHA GANAPATHIYATAN
R1 BY ADV.SRI.M.M.SHAJAHAN
R1 BY ADV.SRI.M.RETHEESHKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15874 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : TRUE COPY OF THE NOTICE DATED 22.5.15 ISSUED BY THE 2ND RESPONDENT ALONG WITH ITS TRUE ENGLISH TRANSLATION.

EXHIBIT P2 : TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR, ERNAKULAM ALONG WITH ITS TRUE ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 15874 of 2015

Dated this the 03rd day of June, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, who availed himself of a loan of Rs.5,00,000/- in the year 2012 from the first respondent for the purpose of constructing a house by mortgaging her immovable property, committed default in course of time. When the respondent Bank issued Exhibit P1 notice of intimation demanding the repayment, lest the mortgaged property should be sold, the petitioner seems to have made representations before the authorities concerned for providing debt relief or in the alternative for restructuring the loan to be repaid in instalments. When nothing concrete has emerged thereafter, the petitioner has filed the present

writ petition.

3. Having initially addressed the matter on merits, the learned counsel for the petitioner has eventually sought the indulgence of this Court to issue a direction to the respondent Bank to provide to the petitioner instalments.

4. Before proceeding further, it is made clear that how ever expansive the jurisdiction of this Court under Article 226 of the Constitution of India may be, I am afraid there cannot be any mandamus compelling an authority, in the present instance the respondent Bank, to act against any established principle of law. In other words, unless there is any statutory provision or at least an agreement between the persons concerned, regarding the facility of instalments, there can be no mandamus in that regard.

5. Be that as it may, the learned counsel for the respondent Bank has fairly submitted that the respondent Bank is willing to accommodate the petitioner's request by accepting the repayment of loan through instalments. According to him, instead of initiating the long drawn process of sale of property, etc; it is prudent for the Bank to accept the instalments, provided the petitioner does not commit

further default. I do see fairness in the submission of the learned counsel for the respondent Bank.

6. In the facts and circumstances, as has been mutually agreed between the petitioner and the second respondent before this Court, the writ petition is disposed of directing the petitioner to repay the entire outstanding loan in fifteen equal monthly instalments beginning from 01.07.2015. Needless to observe, if any default is committed in repaying the loan amount as per the mutually agreed repayment schedule, the respondent Bank is at liberty to proceed further without reference to this judgment. Needless to observe that so long as the petitioner continues to pay the loan amount in instalments, as has been indicated above, the respondent Bank shall not initiate any coercive steps.

With the above observations, this writ petition is disposed of.

DAMA SESHADRI NAIDU
JUDGE

DMR/-