IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WP(C).No. 19862 of 2015 (G)

PETITIONER:

SHIJI, AGED 36 YEARS,
D/O.VENUGOPALAN NAIR,
RESIDING AT NEDUMKANDATHYIL HOUSE, POST KARANTHUR,
KOZHIKODE.

BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

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1. THE GENERAL MANAGER, CALICUT CITY SERVICES CO-OPERATIVE BANK LTD. NO.D2777, POST CHALAPPURAM, KOZHIKODE 673 002.

2. THE CALICUT CITY SERVICES CO-OPERATIVE BANK LTD NO. D2777 REPRESENTED BY ITS SECRETARY, POST CHALAPPURAM, KOCHIKODE 673 002.

3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETY (GENERAL) SAHAKARANA BHAVAN, PUTHIYARA, KOZHIKODE 673 004.

4. THE ARBITRATOR CUM SPECIAL SALE OFFICER, CALICUT CITY SERVICE CO-OPERATIVE BANK NO.D2777, POST CHALAPPURAM, KOZHIKODE - 673 002.

R1 BY ADV. SRI.B.S.SWATHY KUMAR
R1 BY ADV. SRI.REMYA MURALI
R1 BY ADV. SMT.T.RESHMA
R BY SRI. G. GOPAKUMARAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19862 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS :

P1- A TRUE COPY OF THE AWARD OF THE 2ND RESPONDNET DATED 20.1.2014.

P2- A TRUE COPY OF THE AWARD OF THE 2ND RESPONDENT DATED 20.1.2014.

P3- A TREU COPY OF THE AWARD OF THE 2ND RESPONDENT DATED 20.1.2014.

RESPONDENTS' EXHIBITS:

/True Copy/

P.A to Judge.

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 19862 of 2015 (G)

Dated this the 10th day of September, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank, apart from perusing the record.

2. The petitioner, a guarantor for three loans availed by her father from the first respondent Bank, assailed Exts.P1 to P3 awards directing the petitioner and her father to pay an amount of ₹4,42,393/- with interest @ 16% per annum on the principal amount of ₹ 3,75,000/-.

3. The learned counsel for the petitioner has submitted that the petitioner and her father, despite their best efforts, could not repay the loan amount owing to stringent financial conditions faced by them. Accordingly, the petitioner has sought the indulgence of this Court for a direction to the respondent Bank to receive from the petitioner the outstanding loan amount in instalments.

4. Before appreciating the submissions of the learned counsel for the first respondent Bank, I may have to observe that expansive as the jurisdiction of Article 226 of the Constitution of India is, I am afraid, it does not go to the extent of interdicting the contractual terms, especially in a financial transaction involving public money,

so as to compel the respondent Bank to agree for instalments.

5. Be that as it may, evidently being fully aware of the difficulties involved in realising the loan amounts through the process of invidious sale of the property, the learned counsel for the respondent Bank, to his credit, evidently on instructions, has submitted that the respondent Bank is willing to collect the outstanding loan amount in instalments, provided the petitioner is willing to pay 50% of the outstanding loan amount in six weeks and the rest of the amount in six weeks thereafter.

In the facts and circumstances, essentially based on the concession made by the learned counsel for the respondent Bank, this Court disposes of the writ petition with a direction to the petitioner to pay 50% of the outstanding loan amount in six weeks and the balance amount in six weeks thereafter. Needless to observe that, if the petitioner fails to deposit the said amount within the stipulated time, the respondent Bank is at liberty to proceed further without recourse to this Court.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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