IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 22848 of 2014 (E)

PETITIONER :

NITHIN MOHAN O.V.,
S/O.MOHANAN, DEVI SADANAM,
KAVUMBHAGOM, THALASSERY - 670 110.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS :

1. INDIAN OVERSEAS BANK,
   REPRESENTED BY THALASSERY BRANCH,
   AUTHORISED OFFICER, THALASSERY.

2. THE SENIOR MANAGER,
   INDIAN OVERSEAS BANK,
   THALASSERY BRANCH, THALASSERY.

3. THE DIRECTOR,
   CREDIT GUARANTEE FUND TRUST FOR MICRO,
   AND SMALL ENTERPRISES MUMBAI.

R1 & R2 BY ADV. SRI.LEO GEORGE,SC,INDIAN OVERSEAS BANK
R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 22848 of 2014 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE SANCTION LETTER DATED 18/10/2012 ISSUED BY THE 2ND RESPONDENT.

P2: TRUE COPY OF THE STATEMENT OF THE ACCOUNT SHOWING THE DETAILS OF THE ACCOUNTS.

P3: TRUE COPY OF THE LETTER DATED 1/7/2014 ISSUED BY THE 1ST RESPONDENT.

P4: TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT DATED 18/2/2014.

P5: TRUE COPY OF THE POSSESSION NOTICE DATED 25/6/2014 ISSUED BY THE 1ST RESPONDENT.

P6: TRUE COPY OF THE GUIDELINES DATED 1/11/2012 ISSUED BY THE RESERVE BANK OF INDIA.

P7: TRUE COPY OF THE QUESTION AND ANSWERS DOWNLOADED FROM THE INTERNET REGARDING THE FEATURES OF CGFTMSE/MSME.

P8: COPY OF THE ELECTRICITY BILL DT 3.8.2014 ISSUED BY THE KERALA STATE ELECTRICITY BOARD TO THE UNIT OF PETITIONER.

P8(A): COPY OF THE ELECTRICITY BILL DTD 4/9/2014 ISSUED BY THE KERALA STATE ELECTRICITY BOARD TO THE UNIT OF PETITIONER.

P9: COPY OF THE LICENCE DTD 26/6/2014 ISSUED BY THE THALASSERY MUNICIPALITY TO PETITIONER'S UNIT.

P10: COPY OF THE ACKNOWLEDGMENT DT 5/9/2014 ISSUED BY DEPT. OF INDUSTRIES, GOVT. OF KERALA

RESPONDENT(S)' EXHIBITS & ANNEXURES :

ANNEXURE 1: COPOY OF THE LETTER EVIDENCING DEPOSIT OF TITLE DEEDS ISSUED BY THE PETITIONER TO THE THALASSERY BRANCH OF THE R1 BANK DT 18/1/2013.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.22848 of 2014 (E)

...

Dated this the 14th day of January, 2015

JUDGMENT

The petitioner, who had availed of a term loan loan of Rs.16,90,000/- and a Cash Credit facility for Rs.14,00,000/- from the respondent, defaulted in re-payment of the same. Consequently, the respondent bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', against the petitioner. Ext.P4 is the demand notice and Ext.P5 is the possession notice issued by the respondent Bank to the petitioner in that regard. In the writ petition, the petitioner impugns the steps initiated by the respondent Bank for recovery of the loan amounts.

2. Heard Sri.S.Mohammed Al Rafi, the learned counsel appearing for the petitioner, Sri.Leo George, learned Standing counsel appearing for the respondent Nos.1 and 2 and Sri.N.Nagaresh, ASG appearing for the third respondent.

3. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that the sole prayer of the petitioner is to permit him to remit the overdue

amount outstanding to the bank in easy installments. Taking into account the plea of financial hardship raised by the petitioner, I dispose the writ petition with the following directions:

i) The total overdue amount in respect of the term loan is stated to be an amount of Rs.8,41,803/-. The total liability under the Cash Credit facility is stated to be Rs.18,51,335/- as against the original limit of Rs.14,00,000/-. Accordingly, if the petitioner remits an amount of Rs.7,50,000/- in 'three' equal and successive monthly installments commencing from 31.01.2015, towards the Cash Credit facility given to him by the respondent Bank, then, the respondent Bank shall consider restoring the said facility to the petitioner, subject to his complying with the other norms stipulated by the respondent Bank for the grant of Cash Credit facility.

(ii) As regards the regularisation of the term loan availed by the petitioner, if the petitioner pays the amount of Rs.8,41,803/- that is stated to be overdue in respect of the said loan as on today, in 'ten' equal and successive monthly installments commencing from 31.01.2015, and continues to pay the regular monthly installments as per the original loan schedule, then, the recovery steps initiated against the petitioner for recovery of the amounts outstanding to the Bank shall be kept in abeyance.

(iii) It is made clear that, if the petitioner commits a default in respect of any of the installments, he will lose the benefits of this judgment and the respondent bank will be free to continue the recovery proceedings against him from the stage at which they presently stand.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/14/01/