

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 22919 of 2015 (L)

PETITIONERS :

1. M.A.NISAR,
SON OF ABDUL JABBAR,
VELOCOTTU HOUSE, KUMARANALLOOR
KOTTAYAM.
2. P.G.GIREESH,
S/O.GANGADHARAN, 11/337, AMBALATTIL HOUSE
THIRUVARPU P.O., KOTTAYAM.

BY ADV. SRI.V.S.AFSAL KHAN

RESPONDENTS :

1. THE AUTHORIZED OFFICER
REGIONAL OFFICE, SOUTH INDIAN BANK LTD,
1ST FLOOR, REGENCY SQUARE, COLLECTORATE P.O.,
KOTTAYAM-686 001.
2. KERALA STATE HOUSING BOARD
KOTTAYAM DIVISION, KANJIKUZH
KOTTAYAM – 686 004.

R1 BY ADV. SRI.GEORGE VARGHESE, SC
R2 BY ADV. SRI.GEORGE BOBAN, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 22919 of 2015 (L)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 A TRUE COPY OF THE WORK ORDER NO.HB-DB-1050/2012/DW/KTM-MCPY DATED 14.8.2012 OFFICE OF KERALA STATE HOUSING BOARD.**
- EXT. P2 A TRUE COPY OF THE PETITION DATED 29.8.2013 FILED BY THE 1ST PETITIONER.**
- EXT. P3 A TRUE COPY OF THE LETTER NO.HB-DB-1050/2012/DW/KTM-MCY DATED 23.10.13.**
- EXT. P4 A TRUE COPY OF THE 13(2) NOTICE DATED 5.6.14 UNDER SERFASI ACT ISSUED BY THE RESPONDENT.**
- EXT. P5 A TRUE COPY OF THE POSSESSION NOTICE DATED 15.1.2015 ISSUED BY THE RESPONDENT.**
- EXT. P6 A TRUE COPY OF THE PETITION DATED 10.2.2015 FILED BY THE 1ST PETITIONER.**
- EXT. P7 A TRUE COPY OF THE ORDER DATED 2.7.15 IN CMP 2108/15 PASSED BY HONOURABLE CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM.**
- EXT. P8 A TRUE COPY OF THE ADVOCATE NOTICE DATED 17.7.15.**
- EXT. P9 A TRUE COPY OF THE REPRESENTATION DATED 21.7.2015 FILED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 22919 of 2015

Dated this the 4th day of August, 2015

J U D G M E N T

Petitioner are contractors. The 1st petitioner availed an Overdraft facility from the respondent Bank by mortgaging the residential property of the 2nd petitioner. Petitioners also have undertaken a work contract on behalf of the 2nd respondent. It appears that the 2nd respondent has terminated the work awarded to the petitioners. The petitioners impugning SARFAESI proceedings initiated by the respondent Bank, have approached this Court. The amount due from the petitioners is around ₹33 lakhs. Petitioners submit that they are entitled to receive huge amount from the 2nd respondent.

2. Learned counsel for the 2nd respondent submits that the liability is only less than ₹3,00,000/- and further submits that petitioner has caused loss to them.

3. Learned counsel for the Bank submits that the petitioners are not engaged in any contract work at present and therefore the entire amount has to be paid by the petitioners.

4. Petitioners also disputed the liability to pay the amount

now claimed by the respondent. If the petitioners have any dispute regarding the liability, the petitioners have an alternative remedy before the DRT. Therefore leaving open all the issues, this writ petition is disposed of with the following directions:

- (i) Petitioners shall remit ₹3,00,000/- within one month from today.
- (ii) Thereafter, the petitioners shall remit ₹2,00,000/- per month for a period of 5 months from the succeeding month onwards and in the 6th month the entire balance shall be paid in lump sum.
- (iv) If the petitioners commit default in satisfying the conditions as above, the Bank is free to proceed against the petitioners.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE.

Pn