IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 24649 of 2015 (S)

PETITIONER(S) :-

DEAN KURIAKOSE, AGED 34 YEARS
S/O. A.M KURIAKOSE, ANANICKEL HOUSE, PAINGOTTUR P.O
MUVATTUPUZHA.

BY ADVS.SRI.RENJITH B.MARAR
SRI.R.ANAS MUHAMMED SHAMNAD
SMT.RESHMI JACOB
SMT.B.DEEPALAKSHMI
SRI.P.B.SUNEER

RESPONDENT(S) :-
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1. STATE BANK OF TRAVANCORE
REPRESENTED BY ITS MANAGING DIRECTOR, P.B NO.34
POOJAPPURA, THIRUVANANTHAPRUAM - 695 012.

2. STATE OF KERALA REPRESENTED BY IT CHIEF SECRETARY
GOVERNMENT OF KERALA.

3. RESERVE BANK OF INDIA REPRESENTED BY ITS SECRETARY,
SECRETARY DEPARTMENT, RESERVE BANK OF INDIA, 16TH FLOOR,
CENTRAL OFFICE BUILDING, SHAHID BHAGAT SINGH MARG
MUMBAI - 400 001.

4. RELIANCE ASSET RECONSTRUCTION COMPANY LIMITED
570, RECTIFIER HOUSE, NAIGAUM CROSS ROAD
NEXT TO ROYAL INDUSTRIAL ESTATE, WADALA EAST
MUMBAI - 400 031.

5. STATE LEVEL BANKER'S COMMITTEE,
REPRESENTED BY ITS CONVENER, GENERAL MANAGER
TRIVANDRUM CIRCLE, CANARA BANK, TC 26/173(1)
M.G ROAD, TRIVANDRUM - 695 039.

R1 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
SRI.SATHISH NINAN
BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
BY SRI.SANTHOSH MATHEW

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 24649 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS :-

EXHIBIT P1 : TRUE COPY OF THE NEWSPAPER REPORT DATED 24-07-2015 OF THE RESPONDENT NO.1 TO HAND OVER THE STUDENT LOANS TO ARC.

EXHIBIT P2 : TRUE COPY OF THE REPRESENTATIOND DATED 03-08-2015 MADE TO THE 2ND RESPONDENT.

EXHIBIT P2(a) : TRUE COPY OF THE TRANSLATION OF REPRESENTATION DATED 03-08-2015.

EXHIBIT P3 : TRUE COPY OF NOTICE DATED 30-06-2015 SEND TO THE DISTRESSED DEFAULTER OF STUDENTS LOAN INTIMATING HIM THAT HIS DEBTS TOWARDS THE 1ST RESPONDENT AND THEIR SUBSEQUENT RIGHTS, TITLE, INTEREST HAD BEEN TRANSFERRED TO THE PRIVATE ASSET RECOVERY COMPANY.

RESPONDENT(S)' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.

W.P.(C) No.24649 of 2015

Dated this the 13th day of August 2015

J U D G M E N T

Shaffique, J.

The petitioner has filed this writ petition in the form of public interest litigation challenging Ext.P3, by which, information was received by a person, who had obtained education loan, indicating that the State Bank of Travancore, the first respondent Bank, has transferred the non-performing asset category loans to M/s.Reliance Asset Reconstruction Company Limited (Reliance ARC) as per SARFAESI Act, 2002. It is stated that all rights, title and interests with the first respondent Bank in all agreements, deeds and documents executed/obtained in relation to or in connection with the said facility including the right to file suit or institute such other recovery proceedings or to take any further actions have been transferred and that the recipients of the letter had become bound to Reliance ARC jointly or severally. Further, the recipients of the letter were advised to approach or directly deal with Reliance ARC, the 4th respondent Company, in the matter relating to settlement of liabilities. The petitioner submits that the aforesaid action of the first respondent Bank is totally illegal. The loans, which the petitioner is concerned, are education loans, for which, there is no property or secured interest in terms of Sec.2(ze) of the SARFAESI Act, 2002 and therefore, such a question of transfer does not arise at all. It is apprehended that under the guise of the aforesaid transfer, the 4th respondent Company may take proceedings against the loanees, who had availed of education loans under the SARFAESI Act, 2002. The petitioner submits that no such proceedings can be initiated against persons, who had obtained education loans and therefore, he has approached this Court seeking for the following reliefs :-

> "I. Call for the records leading to the issuance of Ext.P3, and issue a writ of mandamus or any other appropriate writ, direction or order of the nature of certiorari, quashing Exts.P3 (judgment in rem) as arbitrary, unreasonable and discriminatory and also fails the proportionality test;
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> II. Issue a writ of mandamus or any other appropriate writ, direction or order of the nature of mandamus directing the 2nd respondent to take appropriate measures to restrain the Asset Recovery Companies from adopting coercive measures for recovering education loans from the distress defaulters on the basis of Exts.P1 and P3.
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> III. Issue a writ of mandamus or any other appropriate writ, direction or order of the nature of mandamus directing the 3rd respondent to issue directives to the 1st respondent for cancelling its agreement to hand over the students loans to the Asset Recovery Company."

2. We have heard the learned counsel for the first respondent Bank as well.

3. It is brought to the notice of this Court that Sec.5 of the SARFAESI Act, 2002 permits 'acquisition of rights or interest in financial assets'. Sec.5 reads as follows :-

> "**5. Acquisition of rights or interest in financial assets.-**(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution-
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> (a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
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> (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.
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> (2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceedings of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and

> enforced by or against the securitisation company or reconstruction company, as the case may be.
>
> (5) On acquisition of financial assets under sub-section (1), the securitization company or reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the securitization company or reconstruction company in such pending suit, appeal or other proceedings.”

4. Learned counsel for the petitioner submits that the transfer is with reference to the financial assets, which is defined under Sec.2(l) and it includes 'a claim to any debt or receivables or part thereof, whether secured or unsecured' and it is therefore, stated that even unsecured loans become financial assets and the 4th respondent Company being an Asset Recovery Company, the transfer is in accordance with Sec.5 of the Act.

5. The apprehension expressed by the learned counsel for the petitioner is with reference to the further proceedings that might be initiated by the 4th respondent against loanees, who had obtained education loans. It is not in dispute that there is no

secured debt or secured interest in terms of Sec.2(ze) or (zf) and therefore, further proceedings cannot be possible. As far as the Asset Recovery Company is concerned, the recovery proceedings can be made only on such conditions as permissible under law and if there is no security interest, apparently, they cannot proceed under Sec.13 of the Act.

6. Having regard to the aforesaid factual situation, we do not think that the apprehension expressed by the petitioner has any bearing on the factual issues. That apart, the writ petition is premature as no steps have been taken against any of the parties, who had taken education loans by invoking proceedings under the SARFAESI Act, 2002.

Accordingly, the writ petition is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

Jvt