

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 27012 of 2015 (B)

PETITIONER :

**INDU DUTT, AGED 51 YEARS
W/O.SATHEESH C. DUTT, POORNAINDU
SANATHANAM WARD, ALAPPUZHA P.O.,
ALAPPUZHA DISTRICT, PIN – 688 001
NOW RESIDING AT PARIAT – DEVI DUTTAM
NEDUMUDI P.O., ALAPPUZHA DISTRICT
PIN – 688 512.**

**BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ**

RESPONDENT(S) :

- 1. STATE BANK OF INDIA
COMMERCIAL BRANCH, VANKARATH TOWERS,
1ST FLOOR, BYE-PASS JUNCTION, PADIVATTOM
ERNAKULAM, REPRESENTD BY ITS BRANCH MANAGER
PIN – 682 023.**
- 2. THE AUTHORIZED OFFICER
STATE BANK OF INDIA,
STRESSED ASSETS RESOLUTION BRANCH, 40/974
IIND FLOOR, R.S. BUILDING, M.G. ROAD
ERNAKULAM, PIN – 682 011.**
- 3. ECOMM I.T. LABS PVT. LTD.,
3RD FLOOR, A WING, THAPASYA BUILDING, INFO PARK
KAKKANAD, ERNAKULAM, PIN – 682 033
REPRESENTED BY ITS MANAGING DIRECTOR
SATHEESH DUTT, RESIDING AT PARIAT-DEVI DUTTAM
NEDUMUDI P.O., ALAPPUZHA DISTRICT, PIN- 688 512.**

**R1 & R2 BY ADVS. SRI.S.EASWARAN
SMT.S.AMBILY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-12-2015, ALONG WITH OP(DRT) NO. 17/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE NOTICE DATED 29-12-2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P2 COPY OF THE JUDGMENT DATED 5-3-2012 IN WP(C) NO. 4632 OF 2012 PASSED BY THIS HON'BLE COURT.
- EXT.P3 COPY OF THE JUDGMENT DATED 26-3-2012 IN WA NO. 582 OF 2012 PASSED BY THIS HON'BLE COURT.
- EXT.P4 COPY OF THE LETTER DATED 19-4-2012 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.
- EXT.P5 COPY OF THE AWARD DATED 23-11-2013 PASSED BY THE LOK ADALATH ORGANIZED BY THE KERALA STATE LEGAL SERVICES AUTHORITY, KOCHI HELD AT THE HIGH COURT AUDITORIUM, ERNAKULAM.
- EXT.P6 COPY OF THE NOTICE DATED 29-7-2015 ISSUED BY THE ADVOCATE COMMISSIONER IN MC NO. 276 OF 2015 ON THE FILES OF THE CHIEF JUDICIAL MAGISTRATE'S COURT, ALAPPUZHA TO THE PETITIONER.
- EXT.P7 COPY OF THE APPLICATION DATED 1-9-2015 SUBMITTED BY THE PETITIONER TO THE ASSISTANT GENERAL MANAGER AND THE CHIEF MANAGER OF THE 1ST RESPONDENT BANK.
- EXT.P8 COPY OF THE APPLICATION DATED 2-9-2015 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT BANK.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....

W.P.(C).No.27012 of 2015

&

O.P.(DRT).No.17 of 2015

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Dated this the 4th day of December, 2015

J U D G M E N T

As the issue involved in both these cases is the same, they are taken up together for consideration and disposed by this common judgment.

O.P.(DRT).No.17 of 2015:

By an interim order dated 10.04.2015, this Court had permitted the 3rd respondent in the O.P.(DRT) to be transposed as the petitioner therein, and the interim order that was earlier granted was extended on condition that the transposed petitioner paid an amount of Rs.20 lakhs to the 5th respondent on or before 18.05.2015. Thereafter, when the matter was taken up for orders on 08.09.2015, the submission of counsel for the petitioner that he was not able to comply with the interim direction on account of paucity of funds was taken note of and he was granted a further extension of time to comply with the direction aforementioned. It was also made clear that, if the amount was not paid to the 5th respondent within the extended time granted by this Court, then the petitioner would have to handover vacant possession of the building in question to the 5th respondent. Thereafter, when the

matter came up on 09.10.2015, the interim order earlier granted was extended by a further period of one month after recording submission of counsel for the 1st respondent that the 1st respondent would discharge the entire liability due to the respondent bank within the said period of one month. Although, it is stated by counsel for the 1st respondent that the earlier direction of this Court, with regard to payment of Rs.30 lakhs, has since been complied, it is not in dispute that the undertaking to discharge the entire liability due to be respondent could not be honoured by the 1st respondent. The 1st respondent in this O.P(DRT) is also the writ petitioner in W.P.(C).No.27012 of 2015. Taking note of the non-compliance with the specific undertaking of the 1st respondent, I am of the view that, the petitioner as also the 1st respondent, who are sailing together, cannot aspire for any discretionary relief from this Court in these proceedings, and hence, the O.P.(DRT) is dismissed.

W.P.(C).No.27012 of 2015:

This writ petition, filed by the 1st respondent in the O.P(DRT) seeking to interdict the steps taken by the respondent bank for recovery of the defaulted loan amounts, also cannot be entertained by this Court taking note of the non-compliance with the specific undertaking given before this Court with regard to discharge of the

liabilities due to the respondent bank. Accordingly, the writ petition is also dismissed. I make it clear that, neither the dismissal of the O.P(DRT) nor the dismissal of the writ petition will stand in the way of the writ petitioner approaching the respondent bank with a request for one time settlement, and the respondent bank from considering the same in accordance with any Scheme that is in vogue.

A.K.JAYASANKARAN NAMBIAR
JUDGE