IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 28468 of 2015 (G)

PETITIONER(S):

SURESH C.AGED 36 YEARS
S/O VELAYUDHAN, PROPRIETOR,
DHANYA INDUSTRIES, KOONATHARA,
OTTAPPALAM TALUK, PALAKKAD DISTRICT

BY ADV. SRI.P.JAYARAM

RESPONDENT(S):
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1. CANARA BANK, SME BRANCH
KULAPPULLY, SHORNUR - 679 122
REPRESENTED BY AUTHORISED OFFICER/CHIEF MANAGER

2. M/S. E-PROCUREMENT TECHNOLOGIES LTD,
REPRESENTED BY THE MANAGER,
NO.14, B-1, 1ST FLOOR, "UNITY POINT"
WOOD STREET, ASHOK NAGAR,
BANGALORE - 560 025

R1 BY SRI.P.GOPINATH MENON, SC, CANARA BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28468 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **COPY OF THE NOTICE DATED 29.07.2013 ISSUED UNDER SECTION 13(2) OF THE SARFAESI ACT BY THE RESPONDENT BANK TO THE PETITIONER.**

EXT.P2: **COPY OF THE POSSESSION NOTICE DATED 21.07.2015 ISSUED UNDER THE SARFAESI ACT BY THE RESPONDENT BANK TO THE PETITIONER.**

EXT.P3: **COPY OF THE NOTICE DATED 11.08.2015 ISSUED UNDER SECTION 13(4) OF THE SARFAESI ACT BY THE RESPONDENT BANK TO THE PETITIONER.**

EXT.P4: **COPY OF THE E-AUCTION NOTICE DATED 11.08.2015 ISSUED BY THE RESPONDENT BANK TO THE PETITIONER.**

EXT.P5: **COPY OF THE REPRESENTATION DATED 25.07.2015 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT BANK.**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.28468 of 2015

Dated this the 18th day of September, 2015

JUDGMENT

The petitioner, who is running a small scale industry namely M/s. Dhanya Industries at Koonathara in Ottappalam, obtained credit facility from the 1st respondent Bank in the year 2011 for a sum of Rupees Fifteen lakhs. According to the petitioner, there were set backs due to recession in the market and as such, the repayment could not be made in time. Due to the default committed by the petitioner, proceedings under the SARFAESI Act was initiated by the 1st respondent Bank, which resulted in Ext.P1 notice issued on 29.07.2013 under Section 13 (2) of the said Act. Ext.P1 was followed by Ext.P2 possession notice dated 21.07.2015. Thereafter, the petitioner was issued with Ext.P3 notice dated 11.08.2015 under Section 13(4) of the Act. Now the 1st respondent Bank has published Ext.P4 notice proposing to conduct an e-action on 22.09.2015. As borne out from Ext.P4 action notice, the total liability as on 11.08.2015 comes to Rs.23,57,890/-. The petitioner would submit that on receipt of Ext.P2 possession notice, he has submitted Ext.P5 representation seeking permission to pay the amount due under the aforesaid credit facility in monthly instalments. It is aggrieved by the recovery proceedings initiated by the 1st respondent Bank, the petitioner is before this Court in this writ petition seeking various reliefs.

2. I heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the 1st respondent Bank.

3. The learned Standing Counsel for the 1st respondent Bank would point out that in spite of repeated notices, the petitioner has not chosen to clear the dues and it was in such circumstances, the Bank was constrained to conduct e-action based on Ext.P4.

4. The petitioner is not disputing the liability due towards the 1st respondent Bank, as reflected in Ext.P4. He is only seeking a reasonable time to clear the said dues in monthly instalments.

5. In such circumstances, for the reasons stated in the writ petition, I deem it appropriate to dispose of this writ petition permitting the petitioner to remit the total dues covered in

Ext.P4 notice in monthly instalments.

In the result, this writ petition is disposed of with the following directions:

The petitioner shall pay a sum of Rupees Fifty thousand to the 1st respondent Bank on or before 22.09.2015 at 10.30 am, in which event, all further proceedings pursuant to Ext.P4 shall be kept in abeyance. This will be subject to a further condition that, the petitioner shall pay the balance outstanding in ten equal monthly instalments commencing from 15.10.2015.

It is made clear that if there is any default on the part of the petitioner in remitting either the payment of Rupees Fifty thousand payable on or before 22.09.2015 and also the subsequent monthly instalments in terms of this judgment, it would be open to 1st respondent Bank to proceed further with Ext.P4 notice.

sd/-
ANIL K. NARENDRAN,
JUDGE

JV