IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 30504 of 2014 (K)

PETITIONERS :

----

1. BABY VARGHESE, AGED 52 YEARS
   S/O.VARGHESE, NADAKKAL HOUSE, KIZHUMURI,
   RAMAMANGALAM P.O., PIN -

2. NOUSHAD AHAMMED EL,
   FLAT NO.3, MINOVA HERITAGE, NOVA ESTATE,
   KAKKANAD REP. BY POWER OF ATTORNEY HOLDER,
   SMT.RAJILA N, CHENGEZHATH, ELITE ENCLAVE, PADAMUGAL
   THRIKKAKKARA.

3. SMT.RAJILA N.,
   CHANGEZHATH, ELITE ENCLAVE,
   PADAMUGAL, THRIKKAKKARA.

BY ADVS.SRI.P.CHANDRASEKHARAN PILLAI (VENNELA)
SMT.BABY JOSE

RESPONDENTS :

----

1. CHIEF MANAGER, CANARA BANK
   MUVATTUPUZHA - 696 661.

2. STATE OF KERALA
   REP. BY ITS SECRETARY, IRRIGATION DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

3. EXECUTIVE ENGINEER
   OFFICE OF THE EXECUTIVE ENGINEER,
   MAJOR IRRIGATION DIVISION, KAKKANAD
   ERNAKULAM - 682 023.

R1 BY ADV. SRI.PAULY MATHEW MURICKEN,SC,
R2 & R3 BY SENIOR GOVERNMENT PLEADER
SMT. SOHBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 30504 of 2014 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF POWER OF ATTORNEY DEED DATED 12.8.2009.

EXT.P-2: TRUE COPY OF THE JUDGEMENT PASSED IN WPC NO.8019/2012 DATED 30.3.2012

EXT.P-3: TRUE COPY OF THE ORDER IN IA NO.5523/2013 O.S.NO.67/2013 SUB COURT, ERNAKULAM DATED 19.2.2014

EXT.P-4: TRUE COPY OF THE GOVERNMENT DIRECTION ISSUED FROM THE OFFICE OF CM NO.25860/2014/CM DATED 17.9.2014

EXT.P-5: TRUE COPY OF THE NOTICE UNDER SECTION 13(2) OF SARFAESI ACT DATED 16.1.2014

EXT.P-6: TRUE COPY OF THE TAKING POSSESSION NOTICE DATED 21.8.2014

RESPONDENT(S)' EXHIBITS & ANNEXURES :

ANNEXURE R1(a): COPY OF THE STATEMENT OF ACCOUNT PERTAINING TO THE OPEN CASH CREDIT FACILITY EXTENDED TO THE 1ST PETITIONER.

ANNEXURE R1(b): COPY OF THE POWER OF ATTORNEY DT 1/7/2010 EXECUTED BY THE 1ST PETITIONER

//TRUE COPY//

P.S. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.30504 OF 2014 (K)

Dated this the 11th day of March, 2015

J U D G M E N T

The petitioners, who had availed of two vehicle loans and a cash credit facility from the respondent bank, defaulted in repayment 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', to recover the loan amounts. Ext.P5 is the notice issued under Section 13(2) of the SARFAESI Act and Ext.P6 is the possession notice issued to the petitioner. In the writ petition, the petitioners impugn the steps initiated by the respondent bank for recovery of the loan amounts.

2. I have heard the learned counsel appearing for the petitioners as also the learned Standing counsel appearing for the respondent bank.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I note that the sole prayer

of the petitioners is to permit them to remit the balance amounts outstanding to the bank in easy installments. Taking into account the plea of financial hardship raised by the petitioners, I dispose the writ petition with the following directions:-

> (i) The total overdue amount, in respect of the vehicle loans availed by the petitioner, is stated to be Rs.6,97,000/- together with accrued interest. Similarly, the total amount outstanding in respect of the cash credit facility, is stated to be Rs.42,70,342/- together with accrued interest. Accordingly, if the petitioners pay the amount of Rs.7,00,000/- on or before 31.3.2015, and pay the amount of Rs.42,70,342/-, together with accrued interest, in twelve equal and successive monthly installments commencing from 20.4.2015, then the further proceedings initiated against them by the respondent bank shall be kept in abeyance.
>
> (ii) It will be open to the petitioners to approach the respondent bank for a regularisation of the cash credit facility, by paying such amounts as may be stipulated by the respondent bank for the said purpose and on complying with the conditions stipulated by the bank for the said purpose. If the respondent bank accedes to the said request of the petitioners, and permits a regularisation on payment of reduced amounts, then the repayment contemplated in this judgment shall stand modified

accordingly, taking into account the reduced amount that the petitioners are called upon to pay.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp