IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 32602 of 2015 (A)

PETITIONER :

PRADEEP S.K., AGED 32 YEARS
S/O. SREENIVASAN, PRIYA SADANAM, KOTTAMKARA
CHANTHANATHOPE P.O., KOLLAM DISTRICT.

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S) :
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1. THE AUTHORISED OFFICER
   INDUSIND BANK LTD., RAMA BHAVAN, NEAR PARUTHELI PALAM
   TOLL JUNCTION, EDAPALLY, KOCHI - 682 024.

2. THE BRANCH MANAGER
   INDUSIND BANK LTD., VARINJAM TOWER
   NEAR HOTAL SHAH RESIDENCY
   KOLLAM DISTRICT - 691 001.

R1 & R2 BY ADV. SRI.VARGHESE C. KURIAKOSE

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

Mn

WP(C).No. 32602 of 2015 (A)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1 - TRUE COPY OF THE LOAN RECEIPT FROM RESPONDENT'S BANK.

EXT. P2 - THE TRUE COPY OF SAFETY INDUCTION CARD ISSUED BY THE D.P WORLD.

EXT. P3 - THE TRUE COPY OF THE ORDER IN CMP NO. 5580/2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.32602 of 2015

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Dated this the 11th day of November, 2015

J U D G M E N T

The petitioner, who had availed of a vehicle loan 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. It is stated that pursuant to Ext.P3 order, the Advocate Commissioner has also taken possession of the vehicle. Counsel for the petitioner would submit that along with the vehicle, the Advocate Commissioner also took possession of a fully loaded container which was stacked on the vehicle while implementing the directions in Ext.P3 order. In the writ petition, the petitioner impugns the steps initiated by the respondent bank for recovery of the loan amounts.

2. I have heard the learned counsel appearing on behalf of the petitioner as also the learned Standing counsel 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 petitioner is to permit him to remit the balance

amounts outstanding to the bank in easy instalments. Taking into account the plea of financial hardship raised by the petitioner, I dispose the writ petition with the following directions:-

(i) The total overdue amount in respect of the loan availed by the petitioner as of today is stated to be Rs.1,51,438/- together with accrued interest. Accordingly, if the petitioner pays the aforesaid amount of Rs.1,51,438/- together with accrued interest in five equal and successive monthly instalments commencing from 30.11.2015, and continues to keep up the regular instalments as per the original loan schedule, further proceedings against the petitioner shall be kept in abeyance.

(ii) On the petitioner paying the amount of Rs.1,51,438/- together with accrued interest in the manner directed in this judgment or earlier, the respondents shall hand over the possession of the secured asset (vehicle) to the petitioner forthwith. As regards the container that was taken possession of, along with the secured asset, since the respondents have no authority to seize goods belonging to a third person in exercise of the powers under the SARFAESI Act, the respondent bank shall forthwith release the container to the petitioner, on the petitioner producing a copy of this judgment before them.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/11.11.15