

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 32617 of 2015 (B)

PETITIONERS :

- 1. DEVASSYA DEVASSYA, AGED 72 YEARS,
MANAGING PARTNER, HOTEL MERIYA, VIII 519
T.B.ROAD, PALA, KOTTAYAM.**
- 2. MATHEW CYRIAC
RESIDING AT KULAMACKAL HOUSE,
KIZHATHADIYLOOR POST,
PALA, KOTTAYAM DISTRICT - 686 575.**
- 3. TESSY MATHEW,
RESIDING AT KULAMACKAL HOUSE,
KIZHATHADIYLOOR POST
PALA, KOTTAYAM DISTRICT - 686 575.**
- 4. V.J.THOMAS
VETTIKATTU HOUSE, MUTHOLI POST,
PULIYANNUR VILLAGE,
NEYYOORKARA, KOTTAYAM**

**BY ADVS.SRI.B.KRISHNA MANI
SRI.JOSEPH T.JOHN**

RESPONDENT :

**AUTHORISED OFFICER
INDIABULLS HOUSING FINANCE LTD., INDIABULLS HOUSE,
448-451, UDYOG VIHAR, DURGAON - 122016.**

**BY ADV. SRI.P.RADHAKRISHNAN (1)
BY ADV. SRI.MADHU RADHAKRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE NOTICE UNDER SECTION 13(2) OF THE
SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND
ENFORCEMENT OF SECURITY INTEREST ACT 2002 ISSUED BY THE
RESPONDENT DATED 15.6.2015
- EXT.P-2: TRUE COPY OF THE RECEIPT DATED 28.8.2014
- EXT.P-3: TRUE COPY OF THE RECEIPT DATED 30.9.2014.
- EXT.P-4: TRUE COPY OF THE RECEIPT DATED 31.10.2014.
- EXT.P-5: TRUE COPY OF THE RECEIPT DATED 30.12.2014.
- EXT.P-6: TRUE COPY OF THE RECEIPT DATED 31.12.2014.
- EXT.P-7: TRUE COPY OF THE RECEIPT DATED 27.5.2015.
- EXT.P-8: TRUE COPY OF THE RECEIPT DATED 31.5.2015.
- EXT.P-9: TRUE COPY OF THE RECEIPT DATED 5.6.2015.
- EXT.P-10: TRUE COPY OF THE RECEIPT DATED 18.6.2015.
- EXT.P-11: TRUE COPY OF THE RECEIPT DATED 18.6.2015.
- EXT.P-12: TRUE COPY OF THE POSSESSION NOTICE DATED 13.10.2015.
- EXT.P-13: TRUE COPY OF THE DOCUMENT DATED 15.12.2004.
- EXT.P-14: TRUE COPY OF THE DOCUMENT DATED 15.12.2004.
- EXT.P-15: TRUE COPY OF THE DOCUMENT DATED 15.12.2004.

RESPONDENT(S)' EXHIBITS :

- EXT.R1(A): COPY OF THE HISTORY OF THE PAYMENT DETAILS OF THE
PETITIONER.

//TRUE COPY//

P.S. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32617 OF 2015 (B)

Dated this the 9th day of November, 2015

J U D G M E N T

The petitioners, who had availed of a loan from the respondent company, defaulted in repayment of the same. Consequently, the respondent company 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.P1 is the notice issued to the petitioners under Section 13(2) of the SARFAESI Act and Ext.P12 is the possession notice issued by the respondent company. In the writ petition, the petitioners impugn the steps initiated by the respondent company 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 company.

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 respondent 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 loan availed by the petitioners, is stated to be Rs.32,26,875/- together with accrued interest from 31.10.2015. Accordingly, if the petitioners pay the said amount of Rs.32,26,875/- together with accrued interest from 31.10.2015 in six equal and successive monthly installments commencing from 30.11.2015, and continues to keep up the regular installment payments as per the original loan schedule, then the further proceedings initiated against them by the respondent shall be kept in abeyance.

(ii) It is further 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 will be free to continue the recovery proceedings against them from the stage at which they presently stand.

A.K.JAYASANKARAN NAMBIAR
JUDGE