

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No.32919 of 2014 (L)

PETITIONERS:

1. **S.VIJAYAKUMAR,S/O.SUKUMARAN,
PROP.S.P.STORES,CHAVADI NADA,
KATTACHALKUZHYP.O.,
RESIDING AT SYAMALALAYAM,
PUTHENKANAM,KATTACHALKUZHYP.O.
THIRUVANANTHAPURAM DISTRICT.**
2. **T.YAMUNA,W/O.S.VIJAYAKUMAR,
SYAMALALAYAM,PUTHENKANAM,
KATTACHALKUZHYP.O.,
THIRUVANANTHAPURAM DISTRICT.**
3. **GREESHMA VIJAY.Y,D/O.S.VIJAYAKUMAR,
SYAMALALAYAM,PUTHENKANAM,
KATTACHALKUZHYP.O.,
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SMT.R.BINDU
SRI.JOHNSON JOSE PANJIKKARAN**

RESPONDENTS:

1. **INDIAN BANK,BALARAMAPURAM BRANCH,
REPRESENTED BY ITS MANAGER,
BALARAMAPURAM P.O.,
THIRUVANANTHAPURAM 695 501.**
2. **THE AUTHORISED OFFICER/CHIEF MANAGER,
INDIAN BANK,ZONAL OFFICE,
THIRUVANANTHAPURAM - 695 001.**

BY SRI.S.EASWARAN,S.C

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1:TRUE COPY OF SECTION 13(2) NOTICE DT. 17.7.14 ISSUED BY THE
SECOND RESPONDENT TO THE PETITIONERS.**

**EXT.P2:TRUE COPY OF THE POSSESSION NOTICE DT. 20.11.14 PUBLISHED BY
THE SECOND RESPONDENT.**

EXT.P3:TRUE COPY OF THE RECEIPT DT. 19.4.11 FOR RS.67.500/-.

**EXT.P4:TRUE COPY OFTHE DEMAND DRAFT FOR RS. 3,16,000 ISSUED BY THE
INDIAN BANK TO M/S.RAJAS DENTAL COLLEGE.**

**EXT.P5:TRUE COPY FO THE RECEIPT DT. 24.10.09 ISSUED BY RAJAS DENTAL
COLLEGE AND HOSPITAL FOR RS.2,67,525.**

**EXT.P6:TRUE COPY OF THE RECEIPT DT. 23.7.07 ISSUED BY THE RAJAS DENTAL
COLLEGE FOR RS.1,00,000/-.**

**EXT.P7:TRUE COPY OF THE RECEIPT DT. 07.9.07 ISSUED BY THE RAJS DENTAL
COLLEGE FOR RS.2,15,000/-.**

**EXT.P8:TRUE COPY OF THE STATEMENT OF ACCOUNT PERTAINING TO THE
EDUCATION LOAN I.**

**EXT.P9:THE TRUE COPY OF THE STATEMENT OF ACCOUNTS ISSUED BY THE
FIRST RESPONDENT BANK TO THE FIRST PETITIONER.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32919 OF 2014

Dated this the 13th day of January, 2015

J U D G M E N T

The petitioners, who had availed of an educational term loan of Rs.12,64,000/-, and an overdraft facility of Rs.4 lakhs, 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.P1 is the notice issued by the 2nd respondent to the petitioners under Section 13(2) of the SARFAESI Act. Ext.P2 is the possession notice. In the writ petition, the petitioners impugn the steps initiated by the respondent bank for recovery of the loan amounts.

2. I have heard Sri.R.S.Kalkura, the learned counsel appearing on behalf of the petitioners as also Sri.S.Easwaran, the learned Standing counsel appearing on behalf of 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 instalments. 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 education loan is stated to be Rs.4,75,849/-. The amount availed under the overdraft facility is Rs.4,70,713/-. Accordingly, if the petitioners pays the total amount of Rs.9,46,562/- together with accrued interest in seven equal and successive monthly instalments commencing from 30.01.2015, and continues to pay the regular instalments as per the original loan schedule in respect of the education loan, the recovery proceedings initiated against the petitioners shall be kept in abeyance.

(ii) It is made clear that if the petitioners commit a default in respect of any of the instalments, 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

