IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 35352 of 2014 (T)

PETITIONER:

SIVADAS T., AGED 49 YEARS
S/O.KUTTAN, THANISSERY HOUSE, EAST HILL P.O
KOZHIKODE 673 009

BY ADVS.SRI.S.K.SAJU
SRI.A.RANJITH NARAYANAN
SMT A.SIMI

RESPONDENT(S):

----

1. STATE BANK OF INDIA
   KALLAI HEIGHTS, KOZHIKODE 673 009
   REPRESENTED BY ITS AUTHORIZED OFFICER

2. SHYJAN, AGED 46 YEARS
   S/O.BALAN, PROPRIETOR, AAVANI GARMENTS
   EAST HILL, KOZHIKODE 673 009

BY SRI.R.S.KALKURA, SC, SBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 35352 of 2014 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	TRUE COPY OF THE NOTICE DATED 30-06-2014 ISSUED BY THE ADVOCATES COMMISSIONER TO THE PETITIONER
EXHIBIT P2	TRUE COPY OF THE JUDGMENT DATED 10-07-2014 PASSED IN WPC NO 17604/2014
EXHIBIT P3	TRUE COPY OF THE NOTICE DATED 07-08-2014 ISSUED BY THE BANK
EXHIBIT P4	TRUE COPY OF THE NOTICE DATED 22-12-2014 ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONER

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRAN, J

W.P.(C.)No.35352 Of 2014

DATED THIS THE 9th DAY OF OCTOBER, 2015

JUDGMENT

The petitioner, who is a guarantor to a loan availed by the 2nd respondent from the 1st respondent Bank, has filed this Writ Petition seeking an order to repay the entire loan amount in monthly instalments. He has also sought for a writ of mandamus commanding the 1st respondent Bank to withdraw the proceedings under the SARFAESI Act recording the undertaking made by the petitioner to make payments in a phased manner without any default.

2. By order dated 26.2.2014, this Court granted an interim stay of all further proceedings pursuant to Ext.P4 for a period of two months on condition that the petitioner remits an amount of ₹2,50,000/- with the 1st respondent Bank within a period of one month from the date of order.

3. Today when the case was taken up for further consideration, the learned Standing Counsel for the 1st respondent Bank submitted that pursuant to the order dated 26.12.2014, the

petitioner has remitted a total sum of ₹2,27,000/-. The learned Standing Counsel would also submit that as on date, the total liability in the cash credit facility availed by the 2nd respondent would come to ₹9,40,045/-, out of which the interest portion would come to ₹7,80,012/-. It is also submitted that, since One Time Settlement facility is available till 31.10.2015, if the petitioner is making an application, his request will be considered by the 1st respondent Bank.

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

5. The petitioner is not disputing the fact that he stood as guarantor in the cash credit facility availed by the 2nd respondent. The petitioner is also not seriously disputing the fact that a sum of ₹9,40,045/- is outstanding in respect of the cash credit facility availed by the 2nd respondent. The learned counsel for the petitioner would submit that since One Time Settlement facility is available, the petitioner shall make an application for availing that facility within a period of one week from today, which

application may be directed to be considered by the 1st respondent Bank

6. Considering the fact that the petitioner is prepared to clear the entire amount outstanding by availing One Time Settlement facility, I deem it appropriate to dispose of this Writ Petition with the following directions:

(i) Within a period of one week from today, the petitioner shall make an application for availing One Time Settlement facility in respect of the loan transaction in question, along with a certified copy of this judgment.

(ii) On receipt of such application, the 1st respondent Bank shall consider the same and pass appropriate orders thereon within a period of one week thereafter.

(iii) If the petitioner is allowed to settle the dues under One Time Settlement facility and he clears the entire dues within the time limit stipulated by the 1st respondent Bank, all further proceedings pursuant to Ext.P4 shall be kept in abeyance. On the other hand, if he is not making such application within one week from today or failed to settle the entire dues in terms of the orders issued in the said application, it would be open to the 1st respondent to proceed further with Ext.P4.

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn