IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 35227 of 2015 (C)

PETITIONER:

ABDUL NAZAR,
S/O. ABOOBACKER, THAYYIL HOUSE, P.O. ARIPPRA,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.I.SAGEER

RESPONDENTS:

THE MALAPPURAM DISTRICT CO OPERATIVE BANK LTD.,
REP. BY ITS GENERAL MANAGER, HEAD OFFICE, MALAPPURAM.
PIN-676 505.

R BY SRI.E.S.M.KABEER,SC,MALAPPURAM DISTRICT CO-OP. BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1. A TRUE COPY OF THE COMMUNICATION ISSUED BY THE RESPONDENT TO THE PETITIONER DATED 01-03-2006.

EXT.P2. A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DT. 03-04-2014.

EXT.P3. A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER'S MOTHER BEFORE SAHRIDAYA KERALA DT. 10-12-2014.

EXT.P4. A TRUE COPY OF THE LETTER ISSUED BY THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES TO THE RESPONDENT AS PER LETTER NO. CRB/9516/2014 DT. 24-12-2014.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 35227 of 2015 (C)

Dated this the 27th day of November, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank, apart from perusing the record.

2. The petitioner availed himself of a loan from the respondent Bank in 2006, having offered the property of his mother as security. He committed default.

3. In the course of time, the petitioner's mother being the surety filed W.P.(C) No. 24809 of 2012 and obtained a facility from this Court that the loan could be discharged in eight instalments. The judgment was rendered on 18.10.2012.

4. Since the direction of this Court in W.P.(C) No. 24809 of 2012 had not been complied with, the respondent Bank invoked the provisions of the SARFAESI Act; it is said to have taken possession of the property on 08.12.2012.

5. Now, the petitioner, the principal borrower, approached this Court seeking a direction to the respondent Bank that his representation pending with the bank may be disposed of before it

could take further coercive steps regarding the loan the petitioner obtained from the Bank.

6. The learned counsel for the respondent Bank has submitted that the petitioner has suppressed the factum of the earlier writ petition and the direction of this Court. He has further submitted that he has not even pleaded about the fact that the Bank had already taken possession of the property. Eventually, the learned counsel for the respondent Bank has submitted that after the Bank's taking possession of the property, the petitioner trespassed upon the property forcing the Bank to file W.P.(C) No. 34474 of 2015, in which the petitioner already took time to file counter affidavit. According to him, in the present writ petition, he has not pleaded about even that writ petition.

7. In reply, the learned counsel for the petitioner has submitted that the petitioner himself was not a party to W.P.(C) No. 24809 of 2012, which, in fact, was filed by his mother. He has further submitted that all that the petitioner seeks in this writ petition is a direction to the respondent Bank to consider his representation.

8. Indeed, even if this Court were to accept the contention of the learned counsel for the petitioner that the earlier writ petition was

filed by his mother— the surety—what could not be lost sight of is the fact that the said writ petition was concerning the same loan contracted by the petitioner. And a direction to pay the outstanding amount in eight instalments given by this Court equally binds the petitioner. It is hard, nay impossible, to believe that the petitioner had no knowledge about the writ petition filed by his mother.

9. The petitioner has also conveniently suppressed the factum of not only the bank's initiating proceedings under SARFAESI Act, but also its recent filing of the writ petition in this Court seeking protection.

10. Whatever be the merit of the case espoused by the petitioner, judicial review under Article 226 of the Constitution of India being an equitable remedy, the conduct of the party assumes paramount importance. The best of the cases can be thrown out for want of bona fides. This case is one classic example of the suitor grossly lacking bona fides. The petitioner has regrettably taken recourse to abuse of process.

As a result, the writ petition is dismissed with ₹5000 cost.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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