IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 35513 of 2014 (L)

PETITIONER(S):
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1. **SARADA, AGED 81 YEARS, W/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989, CHENNILODE, MEDICAL COLLEGE (P.O), TRIVANDRUM-695011.**

2. **MASTER ASWIN S.MOORTHY, AGED 16 YEARS, S/O.NARAYANA MOORTHY, REPRESENTED BY HIS FATHER AND NATURAL GUARDIAN S.NARAYANA MOORTHY, S/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989, CHENNILODE, MEDICAL COLLEGE (PO), TRIVANDRUM-695011.**

3. **S. NARAYANA MOORTHY, AGED 48 YEARS, S/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989, CHENNILODE, MEDICAL COLLEGE (PO), TRIVANDRUM-695011.**

4. **SARASWATHY E.R., AGED 46 YEARS, W/O. S .NARAYANA MOORTHY, RESIDING AT TC 14/1989, CHENNILODE, MEDICAL COLLEGE (PO), TRIVANDRUM-695011.**

5. **KUMARI S.N.REVATHY, AGED 11 YEARS, D/O. NARAYANA MOORTHY, REPRESENTED BY HER FATHER AND NATURAL GUARDIAN S.NARAYANA MOORTHY, AGED 48 YEARS S/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989, CHENNILODE MEDICAL COLLEGE (PO), TRIVANDRUM-695011**

   BY ADV. SRI.R.V.SUJIT KUMAR

RESPONDENT(S):

**ICICI BANK LIMITED,
LAND MARK, RACE COURSE CIRCLE,
VADODARA HAVING ITS BRANCH OFFICE NEAR STATUE,
M.G.ROAD, THIRUVANANTHAPURAM-695 001,
REPRESENTED BY ITS AUTHORISED SIGNATOR.**

**R1 BY ADVS. SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.JOSEPH KURIAN VALLAMATTAM**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 - TRUE COPY OF OP TREATMENT SHEET.

EXT.P2 - TRUE COPY OF JUDGMENT DATED 12-11-2014 IN WPC. NO. 29362/2014 OF THIS COURT.

EXT.P3 - TRUE COPY OF OFFER LETTER DATED 07-03-2005 BY THE RESPONDENT.

EXT.P4 - TRUE COPY OF LETTER DATED 10-08-2012 ISSUED BY RESPONDENT.

EXT.P5 - TRUE COPY OF THE REPRESENTATION DATED 30-12-2013 SUBMITTED BY 3RD PETITIONER.

EXT.P6 - TRUE COPY OF THE LAWYERS' NOTICE DATED 15-11-2014 ISSUED BY PETITIONER.

EXT.P7 - TRUE COPY OF THE COMMISSION WARRANT DATED 30-9-2014 ISSUED BY CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM.

EXT.P8 - TRUE COPY OF THE POSSESSION NOTICE DATED 24-12-2014 ISSUED BY THE RESPONDENT.

EXT.P9 - TRUE COPY OF APPLICATION NO.MC 969/2014 SUBMITTED ON 30.09.20114 BY THE RESPONDENT BANK BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM.

EXT.P10 - TRUE COPY OF THE ORDER DATED 30.09.2014 IN MC 969/2014 PASSED BY THE CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM.

EXT.P11 - TRUE COPY OF THE COMMISSION REPORT IN MC 969/2014 OF THE CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM.

EXT.P12 - TRUE COPY OF ORDER DATED 20.01.2015 IN W.P(C) NO.35513/2014 OF THIS COURT PUTTING THE PETITIONERS IN POSSESSION OF THE SECURED ASSET.

EXT.P13- TRUE COPY OF JUDGMENT DATED 4.2.2015 IN WA.143/2015 OF THE RESPONDENT BANK IN POSSESSION OF THE SECURED ASSET.

EXT.P14 - DICTUM LAID DOWN BY THE SUPREME COURT IN ICIC BANK LTD. V. PRAKASH KAUR AND OTHERS 2007 (2) SCC 711.

EXT.P15 - TRUE COPY OF NEWS REPORT DATED 17.12.2014 BY REUTORS NEWS AGENCY IMPOSING FINE OF ₹5 MILION BY THE RBI.

EXT.P16 - TRUE COPY OF SALE NOTICE DATED 29.12.2014.

RESPONDENT(S)' EXHIBITS:

R1(A):- TRUE COPY OF THE NOTICE DATED 8.6.2012 ISSUED UNDER SECTION 13(2) OF THE SARFAESI ACT ISSUED BY THE RESPONDENT.

R1(B):- TRUE COPY OF THE TRACKER DATED 20.6.2012.

R1(C):- TRUE COPY OF THE

R1(D):- TRUE COPY OF THE POSTAL RECEIPTS (5 NOS. EVIDENCING THE DESPATCH OF NOTICE IN FIVE ADDRESS)

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APPENDIX-(2)

R1(E):- TRUE COPY OF THE ARTICLE TRACKER OF THE POSTAL RECEIPT.

R1(F):- TRUE COPY OF THE ARTICLE TRACKER OF THE POSTAL RECEIPT.

R1(G):- TRUE COPY OF THE ARTICLE TRACKER OF THE POSTAL RECEIPT.

R1(H):- TRUE COPY OF THE ARTICLE TRACKER OF THE POSTAL RECEIPT.

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.35513 of 2014

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Dated this the 10th day of April, 2015

JUDGMENT

Aggrieved by the coercive action initiated by the respondent bank against the petitioners under the SARFAESI Act, they have come up before this Court.

2. The first petitioner is a senior citizen and the second petitioner is her grandson. The third petitioner is the son of the first petitioner and father of the second petitioner. The third petitioner availed a housing loan of ₹3,50,000/- on 12.3.2005 from the respondent bank. The amount was re-payable together with interest @ 8.25% within a period of 192 months in equal installments of ₹3,136/- per month.

3. The petitioners allege that though the third petitioner was making the repayment regularly, due to some financial constraints, he defaulted the payments and ultimately the bank asked the third

respondent to come for a one time settlement on 25.8.2012. The petitioners allege that the third petitioner has remitted a sum of ₹1,50,000/- till date. Thereafter, he submitted a requested for one time settlement to permanently close the loan account by March, 2014 in three installments by waving of the interest and surcharge respectively. However, it could not evoke any positive response. The petitioners were proceeded against by the respondent bank under the SARFAESI Act. The petitioners allege that no statutory notice envisaged under Section 13(2) of the Act has been served upon them. It is with this background, they have approached this Court.

4. I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent bank, which resisted the writ petition through the detailed counter affidavit.

5. On a specific query put by this Court as to whether this matter could be settled, certain suggestions were made by the learned counsel for the petitioners as well as by the learned standing counsel

for the respondent bank. It was submitted by the learned standing counsel for the respondent bank that the respondent bank is ready to settle the dues for ₹6 lakhs, if ₹2 lakhs is paid immediately and the balance remaining is paid in equal monthly installments. The learned counsel for the petitioners submitted that it is not possible for the petitioners to raise the said sum immediately.

6. Taking into account all the relevant circumstances of the case, this Court is of the definite view that the writ petition can be disposed of permitting the petitioners to clear off the dues in installments.

In the result, the writ petition is disposed of permitting the petitioner to pay ₹1 lakh on or before 24.4.2015 and to pay the balance amount of ₹5 lakhs in six equal monthly installments which would fall on 24^{th} of every month thereafter. In the event of remitting the amount of ₹1 lakh as above, the possession of the building shall be handed over to the petitioners. It is hereby made clear that if the petitioners fail in making two installments consecutively, the petitioners shall surrender possession of the building to the respondent bank and it shall be open to the respondent bank to proceed against the petitioners in accordance with law.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

krj

/true copy/

P.A to Judge