IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 38254 of 2015 (F)

PETITIONERS:

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1. AMMINI
   W/O.UNNICHEKKAN, KAINATHOODAN HOUSE,
   CHITTISSERY, THRISSUR DISTRICT.

2. VASANTHY
   W/O.SHIBU, KEEDAYI HOUSE, CHITTISSERY,
   THRISSUR DISTRICT.

3. VALSALA
   D/O.UNNICHEKKAN, KAINATHOODAN HOUSE, CHITTISSERY,
   THRISSUR DISTRICT.

4. SHIBU
   S/O.VELAUDHAN,
   KEEDAYI HOUSE, CHITTISSERI, THRISSUR DISTRICT.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENTS:

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1. THALORE SERVICE CO-OPERATIVE BANK LTD NO.435
   P.O.THALORE, THRISSUR DT, PIN: 680 306,
   REPRESENTED BY ITS SECRETARY.

2. UNIT INSPECTOR,
   AMBALLUR UNIT,
   C/O.CO-OPERATIVE SOCIETY ASSISTANT REGISTRAR OFFICE,
   IRINJALAKUDA, THRISSUR DIST, PIN: 680 121.

3. ASSISTANT REGISTRAR,
   DIRECTOR GENERAL OFFICE OF ASSISTANT REGISTRAR,
   IRINJALAKUDA, THRISSUR DIST, PIN: 680 121.

BY SR.GOVERNMENT PLEADER JOSEPH GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 38254 of 2015 (F)

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF THE NOTICE DATED 15/10/2014 ISSUED TO THE 1ST PETITIONER.

EXT.P1(A):TRUE COPY OF THE NOTICE DATED 15/10/2014 ISSUED TO THE 2ND PETITIONER.

EXT.P1(B):TRUE COPY OF THE NOTICE DATED 15/10/2014 ISSUED TO THE 3RD PETITIONER.

EXT.P1(C):TRUE COPY OF THE NOTICE DATED 15/10/2014 ISSUED TO THE 4TH PETITIONER.

EXT.P2: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONERS BEFORE THE 1ST AND 2ND RESPONDENTS DATED 10/12/2015.

RESPONDENTS' EXHIBITS NIL

TRUE COPY

p.s.to judge

CSS/

Dama Seshadri Naidu, J.

W.P.(C)No.38254 of 2015

Dated this the 17th day of December, 2015

JUDGMENT

The petitioners took ten lakh rupees each as a housing loan from the respondent bank in 2012, the repayment period being five years. In the course of time, they defaulted the loan repayment, ostensibly, owing to their financial stringency. As a result, the respondent Bank served notices, dt.15.10.2014, on the petitioners demanding them to remit the defaulted amounts within seven days.

2. According to the petitioners, though they earnestly tried to clear the accumulated dues in their loan accounts, they could not succeed as their financial problems persisted. Thereafter, the respondent bank filed ARC No. 1414/2015, 1445/2015, 1446/2015 and 1453/2015 before the 3rd respondent, which passed an ex parte award on 31.3.2015. Armed with the award, the respondent bank has initiated steps to take possession of the mortgaged

asset: a residential property including a house. The outstanding loan is said to be about ₹4,00,000/-.

3. Under the above circumstances, the petitioners are said to have submitted Ext.P2 representation seeking instalment facility. Complaining that the respondent bank has so far not acted on their representation, but, instead, proceeding to sell the property, the petitioners have filed this writ petition.

4. Heard the learned counsel for the petitioners and perused the record.

5. The facts are not in dispute: The petitioners had committed default, and the respondent bank initiated recovery proceedings. The issue, pure and simple, is a contractual dispute —a commercial one at that. If the petitioners had any substantial cause to be sustained, they would have taken recourse to any appellate proceedings. Even they did not choose to contest the arbitration proceedings.

6. The petitioners' only excuse is that they submitted Ext.P2 representation and that the respondent bank should consider it before they proceed further. First, it is not a statutory notice required to be replied by the recipient, lest some adverse

inference should be drawn. It is, at best, an extra-legal measure by the desperate debtors to ward off, if they can, the impending recovery proceedings. Second, the very notice was barely a week ago—10.12.2015—and the writ petition was filed within no time. It is impermissible to compel, even expect, the bank officials to respond to the petitioners' demand for instalments. Instalments they have since inception; what the petitioners' now wanted is a rescheduling of the loan, which is the creditor's prerogative and not in this Court's province.

For the above reasons, I dismiss the writ petition. No order on costs.

Sd/- Dama Seshadri Naidu, Judge

css/ true copy

P.S.TO JUDGE