IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 24TH DAY OF JANUARY 2020 / 4TH MAGHA, 1941

OP (DRT).No.16 OF 2020

AGAINST SA NO.210/2019 PENDING BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONER/S:

**M/S CHERUPUSHPAM FILMS PVT. LTD.
8TH FLOOR, CHERUPUSHPAM BUILDING, SHANMUGAM ROAD, ERNAKULAM VILLAGE, PIN CODE-682 031, REPRESENTED BY ITS MANAGING DIRECTOR K.J.JOSEPH.**

**BY ADVS.
SRI.C.S.AJITH PRAKASH
SRI.T.K.DEVARAJAN
SMT.T.N.SREEKALA
SRI.FRANKLIN ARACKAL
SRI.PAUL C THOMAS
SRI.M.B.SOORI**

RESPONDENT/S:

1. **THE HEAD RESOLUTION
PHOENIX ARC PRIVATE LIMITED, DANI CORPORATE PARK, 5TH FLOOR, 158, C.S.T ROAD, KALINA, SANTA CRUZ (EAST) MUMBAI-400 098. REPRESENTED BY ITS AUTHORIZED OFFICER.**

2. **SOUTH INDIAN BANK LTD,
REGIONAL OFFICE, SIB BUILDING, INFO PARK ROAD, RAJAGIRI VALLEY P.O.KAKKANAD, KOCHI, PINCODE-682 039.**

3. **THE AUTHORIZED OFFICER,
SOUTH INDIAN BANK LTD, REGIONAL OFFICE, SIB BUILDING, INFO PARK ROAD, RAJAGIRI VALLEY P.O.KAKKANAD, KOCHI, PINCODE-682 039.**

4. **M/S KERALA CHAMBER OF COMMERCE AND INDUSTRY,
CHAMBERS CORNER, SHANMUGAM RAOD, KOCHI-682 041, REPRESENTED BY ITS CHAIRMAN.**

OTHER PRESENT:

SRI.SAJU.N.A, SRI.SUNIL SHANKAR, SRI.SIVIASANKARA PANICKER FOR R4

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON 24.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

O.P.(DRT) No. 16 of 2020

Dated this the 24th day of January, 2020

JUDGMENT

The prayers in the above OP(DRT) filed under Article 227 of the Constitution of India are as follows :

> *(i) "issue order directing the Additional Chief Judicial Magistrate (MLA/MP) Court Ernakulam not to proceed with the proceedings in MC No.341/2019, until the disposal of the SA 210/2019 pending before the Hon'ble Debt Recovery Tribunal, Ernakulam.*
>
> *(ii) Issue order directing the Debt Recovery Tribunal, Ernakulam to take up the case filed by the petitioner u/s.17 of the Act and pass orders thereon and till such time keep in abeyance all further proceedings in MC No.341/2019 on the file of Additional Chief Judicial Magistrate (MP/MLA) Court, Ernakulam*
>
> *(iii) Such other appropriate order or direction as this Hon'ble Court may deem fit and proper to meet the ends of justice."*

2. Heard Sri.C.S.Ajith Prakash, learned counsel appearing for the petitioner, Sri.N.A.Saju, learned counsel appearing for R1, Sri.Sunil Shankar, learned counsel appearing for R2 and R3 and Sri.Sivasankara Panicker, learned Advocate appearing for R4.

3. The learned counsel counsel appearing for R1 and the learned Advocate appearing for R4 would submit that this Court may not interfere in this matter in any manner for the simple reason that though the petitioner has moved the Debt Recovery Tribunal, by filing Securitization

application SA No. 210/2019 before the Debt Recovery Tribunal-II, Ernakulam under Sec.17 of the SARFAESI Act and as also filed Ext.P14 stay application in the said SA, the petitioner has not taken any steps for getting either the stay application or the SA listed for consideration and orders. Further, it is pointed out by the said respondents that it is reliably learnt that an application filed by the petitioner for getting advance listing of the matter before the DRT is now scheduled to come up before the Tribunal on 04.02.2020 and that it is for the petitioner to immediately move for appropriate orders before the DRT and without doing so, the invocation of the remedy under Article 227 of the Constitution of India by filing the instant petition is misconceived etc.

4. Sri.C.S.Ajith Prakash, learned counsel appearing for the petitioner has made submissions on the basis of Ext.P8 interim order passed by this Court dated 09.07.2019 in W.P.(C.) No.15765/2019 filed by the petitioner and also Ext.P9 judgment etc.

5. After hearing both sides, this Court is of the considered view that it is for the petitioner to immediately move the Debts Recovery Tribunal, if he has any legally justiciable grievances in the matter and invocation of remedy under Article 227 of the Constitution of India, without effectively doing so, may be uncalled for.

6. Accordingly, it is for the petitioner to make immediate motion before the DRT without any further delay and if the petitioner makes any

motion before the DRT even prior to 04.02.2020 with prior notices to aforesaid respondents, then it is for the DRT to examine the said pleas and then deal with the matter after hearing both sides, in accordance with the law. Except recording the abovesaid submission made on behalf of the abovesaid respondents, no further orders are called for, in view of the abovesaid aspects.

With these observations and directions, the above OP(DRT) will stand disposed of.

sd/-

ALEXANDER THOMAS,
JUDGE

SKS

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE ADVOCATE COMMISSIONER**
EXHIBIT P2	**A TRUE COPY OF THE MC 341/2019 DATED 14.3.2019**
EXHIBIT P3	**A TRUE COPY OF THE IA NO 99/2017 DATED 16.1.2017**
EXHIBIT P4	**A TRUE COPY OF THE IA NO 1287/2017 DATED 24.5.2017**
EXHIBIT P5	**A TRUE COPY OF THE IA NO 1679/2017**
EXHIBIT P6	**A TRUE COPY OF THE COUNTER AFFIDAVIT DATED 17.8.2017 IN IA NO 1679/2017**
EXHIBIT P7	**A TRUE COPY OF THE WPC NO 15765/2019 WITHOUT EXHIBITS**
EXHIBIT P8	**A TRUE COPY OF THE INTERIM ORDER DATED 9.7.2019**
EXHIBIT P9	**A TRUE COPY OF THE JUDGMENT IN WPC NO 15765/2019**
EXHIBIT P10	**A TRUE COPY OF THE JUDGMENT IN OPC NO 1284/2019 DATED 2.9.2019**
EXHIBIT P11	**A TRUE COPY OF THE ACKNOWLEDGEMENT LETTER OF THE COMPLIANT BY THE RBI DATED 12.10.2016**
EXHIBIT P12	**A TRUE COPY OF THE JUDGMENT IN WA NO 2514/2016 DATED 14.11.2017**
EXHIBIT P13	**A TRUE COPY OF THE LETTER DATED 24.12.2019 ISSUED BY THE PETITIONER TO THE AUTHORIZED OFFICER OF THE 1ST RESPONDENT**
EXHIBIT P14	**A TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER IN SA NO 210/2019**