IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 20TH DAY OF MARCH 2020 / 30TH PHALGUNA, 1941

WA.No.624 OF 2020

AGAINST THE ORDER DATED 03.03.2020 IN I.A. NO.1/2020 IN WP(C) 30599/2019(Y) OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS IN I.A/PETITIONERS IN W.P:

1 A.AMBUJAM, AGED 69 YEARS,
W/O.LATE KUMARESAN ASARI, SWATHI,
VIVEKANANDA NAGAR, PARASSALA P.O.,
THIRUVANANTHAPURAM, PIN-695502.

2 SANTHOSH KUMAR K., AGED 45 YEARS,
S/O. LATE KUMARESAN ASARI, SWATHI,
VIVEKANANDA NAGAR, PARASSALA P.O.,
THIRUVANANTHAPURAM, PIN-695502.

BY ADV. SMT.R.RANJANIE

RESPONDENTS/RESPONDENTS IN I.A/RESPONDENTS IN W.P:

1 THE STATE BANK OF INDIA
(ERSTWHILE STATE BANK OF TRAVANCORE),
STRESSED ASSET RECOVERY BRANCH, LMS COMPOUNDS,
VIKAS BHAVAN P.O., THIRUVANANTHAPURAM, PIN-695003,
REP. BY THE AUTHORIZED OFFICER, CHIEF MANAGER.

2 THE CHIEF MANAGER,
THE STATE BANK OF INDIA (ERSTWHILE STATE BANK OF TRAVANCORE), STRESSED ASSET RECOVERY BRANCH,
LMS COMPOUNDS, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM, PIN-695003.

BY ADV. SRI.R.S.KALKURA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.03.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 20th day of March, 2020

S.Manikumar, CJ.

Instant writ appeal is filed against order dated 03.03.2020 in I.A. No.1 of 2020 in W.P.(C) No.30599 of 2019, by which, a learned single Judge of this Court dismissed the said application, holding that the prayer for extension of time to comply with the directions contained in the judgment dated 15.01.2020 is seriously opposed by learned standing counsel for the respondent bank and, therefore, not inclined to grant the same.

2. The subject issue relates to the proceedings initiated by respondent bank i.e., State Bank of India, under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). Before the writ court, submissions were made by learned standing counsel for the respondent bank, that if the amount of Rs.20 lakhs was paid on or before 25.01.2020, then the bank is prepared to give the appellants time to clear the balance of total outstanding dues in two further installments so as to clear the dues latest by 31.03.2020. The bank has also submitted that if the appellants do not comply with any of the above said conditions, they would proceed further with the impugned proceedings from the stage where it has been stopped. The learned single Judge has disposed of W.P.(C) No.30599 of 2019 directing the competent officer of the bank to immediately furnish a comprehensive

and authenticated statement of accounts pertaining to the loan transaction so as to precisely and clearly show the total dues to be paid by the borrower in the transaction and that the details be shown in the said statement, as to how the said figures have been arrived at, to the appellants, which shall be done within a week. It was further directed that the appellants should remit an amount of Rs.20 lakhs to the bank on or before 31.01.2020 and in case of compliance, the bank would give further time to the appellants to clear off the balance dues in two equal monthly installments, viz., on or before 28/02/2020 and on or before 31/03/2020. Till such time, the bank was directed to keep the coercive proceedings in abeyance with a further rider that if the appellants do not comply with any of the above said conditions or make default, the respondent bank can proceed further with the impugned proceedings from the stage where it has been stopped.

3. After the issuance of statement of accounts by the bank, appellants have filed the subject interlocutory application in the disposed writ petition, stating that the statement given by the bank is not at all true or correct, and therefore, prayed to enlarge the time already granted by the writ court vide judgment dated 15.01.2020. It was also prayed that they be permitted to remit the outstanding balance in the cash credit account as One Time Settlement, on or before 30.06.2020. The learned single Judge has taken into account the submissions putforth by the appellants and arrived at a finding in the I.A., as stated above.

4. Heard learned counsel for the parties and perused the materials available on record.

5. The paramount contention advanced by the appellants is that they are not in a position to remit the amounts, as directed by the writ court and, therefore, further time needs to be granted.

6. It is well settled proposition in law that proceedings initiated under the SARFAESI Act, 2002 shall not be interfered with by High Courts, in exercise of the powers under Article 226 of the Constitution of India. In a catena of decisions, the Hon'ble Supreme Court held that SARFAESI Act is a self contained statute, having its own mechanism to address the grievances, if any person is aggrieved by the proceedings under the Act. Taking into account the various judgments rendered in respect of the proceedings initiated under the SARFAESI Act, the Hon'ble Apex Court in **Authorized Officer, State Bank of Travancore and Another v. Mathew K.C.** reported in (2018) 3 SCC 85, at paragraphs 15 to 18, held as follows:

> "15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex - parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its

character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Union Bank of India v. Satyawati Tondon [(2010) 8 SCC 110]*, has also not been kept in mind before passing the impugned interim order:

"46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad (AIR 1969 SC 556), Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1, and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107,* and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order

cannot be considered sufficient justification to have declined interference.

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Another, [(1997) 6 SCC 450]*, observing:

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate Courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

18. The impugned orders are therefore contrary to the law laid down by this Court under Art.141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed."

7. We are also of the view that directions in the judgment of the writ court dated 15.01.2020 were issued on the basis of the concession extended by the respondent bank that, if the appellants make the payment of Rs.20 lakhs, bank would show some indulgence with respect to the balance payment, within a time limit fixed. Accordingly, directions were issued and W.P.(C) No.30599 of 2020 was partly allowed. However, the appellants have failed to discharge their obligation. It was held by the Hon'ble Apex Court in the above-quoted judgment that no writ petition should be entertained by a

Court under Article 226 of the Constitution of India against the proceedings initiated under the SARFAESI Act, 2002. However, in the case on hand, concession has been made by the respondent bank. Furthermore, there is no dispute with respect to the amounts figured out in the proceedings initiated by the bank.

In the light of the above discussions and findings, we are of the considered opinion that the appellant has not made out a case justifying interference with the impugned judgment, in appeal under Section 5 of the Kerala High Court Act. Needless to say, appeal fails and accordingly, dismissed. No costs. However, we make it clear that if the appellant is entitled to get any benefit of moratorium declared by the Governments, banking institutions or Reserve Bank of India, this judgment will not stand in their way in granting such time, in accordance with the orders so passed.

Sd/-
S.MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P.CHALY
JUDGE

Krj.25/2

APPENDIX

APPELLANTS' ANNEXURES:-

A1:- COPY OF THE JUDGMENT DATED 15.1.2020 IN W.P(C) NO.30599/2019.

A2:- COPY OF THE DEMAND NOTICE DATED 3.3.2020 ISSUED BY THE RECOVERY OFFICER OF DEBT RECOVERY TRIBUNAL, ERNAKULAM.

RESPONDENT'S ANNEXURES:-NIL

//TRUE COPY//

P.A. TO CJ