**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR**

**&**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**TUESDAY, THE 8TH DAY OF DECEMBER 2020/17TH AGRAHAYANA, 1942**

**WA.No.1587 OF 2020**

**AGAINST THE JUDGMENT IN WP(C) 5232/2020(D) OF HIGH COURT OF KERALA DATED 13.11.2020**

**APPELLANTS/PETITIONERS:**

1 SUNITHA ROY
AGED 38 YEARS
W/O.ROY GEORGE,PROPRIETRIX,
MARIYAM CASHEW INDUSTRIES,
RESIDING AT ELANGALLOORTHEKKU,
PANDINJATTEKIZHAKKU,
PALLICHANDA,SOORNAD.P.O,
KOLLAM DISTRICT, PIN-690522.

2 SHAMEER ABDULLA,
AGED 41 YEARS
S/O.HABEEBULLA,PROPRIETOR,
M/S.SINAN CASHEWS,VP/XII/369A,
PUNTHALATHAZHAM,KILIKOLLOOR(PO),
KOLLAM DISTRICT,PIN-691004.
RESIDING AT MANCHERY HOUSE,
IQBAL NAGAR-42,VADAKKEVILA.P.O,
PALLIMUKKU,KOLLAM DISTRICT-691010.

3 S.ASHKAR KHAN MUSALIAR,
AGED 46 YEARS
S/O.A.M.SAIINULABDEEN MUSALIAR,
PROPRIETOR,M/S.ASHKAR CASHEW INDUSTRIES,
KARICODE, KOLLAM-691005,
RESIDING AT SHAFIMANZIL, KARICODE,
TKMC(PO),KOLLAM-691005.

**4 G.P.SIVAKUMAR,**
**PROPRIETOR,SREEHARI CASHEWS,**
**9/571,ULIYANAD,KARAMCODE.P.O,**
**CHIRAKKARA VILLAGE,KOLLAM-691579.**

**BY ADVS.**
**SRI.K.P.DANDAPANI (SR.)**
**SRI.MILLU DANDAPANI**
**SRI.PREMCHAND R.NAIR**

**RESPONDENTS/RESPONDENTS:**

**1 CANARA BANK**
**KOLLAM MAIN BRANCH,THAMARAKKULAM,**
**KOLLAM-691001,REPRESENTED BY ITS MANAGER.**

**2 STATE OF KERALA,**
**REPRESENTED BY THE PRINCIPAL SECRETARY**
**TO GOVERNMENT, SECRETARIAT, FISHERIES,**
**PORTS, ENVIRONMENT AND INDUSTRIES**
**(COIR AND CASHEWS), MAIN BLOCK,**
**GOVERNMENT SECRETARIAT,**
**THIRUVANANTHAPURAM - 695 001.**

**3 STATE LEVEL BANKERS COMMITTEE(SLBC),**
**REPRESENTED BY ITS CONVENER/GENERAL MANAGER,**
**CANARA BANK, SLBC CELL, CORPORATE OFFICE,**
**CANARA BANK BUILDING, PB NO.159,**
**MAIN ROAD, TRIVANDRUM – 695 001.**

**SRI.M.GOPIKRISHNAN NAMBIAR, FOR R1,**
**SRI.TEK CHAND, SR. GOVERNMENT PLEADER FOR R2**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

## JUDGMENT

Dated this the 8th day of December, 2020

S. Manikumar, CJ.

Instant Writ Appeal is filed challenging the judgment in W.P(C). No.5232 of 2020 dated 13.11.2020, by which, a learned Single Judge, taking note of the decisions, which dealt with availability of an alternate remedy, dismissed the writ petition.

2. Short facts leading to filing of the writ petition are as follows:

The petitioners herein are the processors and exporters for cashew based in Kollam. The industry has employed more than 3 lakh workers, of which 90% are women. The industry was doing well till 2015. However, 80% of the units are either closed or at the verge of closure, due to increase in the price of Raw Cashew Nuts in the international market. When the market suffered recession, the petitioners were unable to pay the loan installments for the loan availed from the 1st respondent bank. As the petitioners were suffering coercive steps from the Ist respondent bank, they approached the Government of Kerala.

The Government of Kerala took the imitative and constituted a Cashew Revivals Committee. Thereafter, on the basis of the committee recommendations and decision by the Government of Kerala, State Level Bankers Committee formulated a revival scheme for cashew

processing industry. The petitioners and similarly placed persons were directed to submit an application with required documents. The petitioners were getting ready to submit the application as per the directions. But, without granting proper breathing time, the 1st respondent issued Exhibits P6 to P6(c) notices under Section 13(2) of the SARFAESI Act, 2002. It is also evident from Exhibit P7 that an amount of Rs.150 crores was sanctioned, as per the recommendation of the Cashew Revival Committee. Exhibit P7 letter was handed over to the petitioners by the Hon'ble Chief Minister in a programme organized on 26.02.2019 at Sopanam Auditorium, Kollam. The 1st respondent is acting in an arbitrary manner, without considering the recommendations of Committee for the revival of cashew industries. The petitioners are deeply aggrieved by the act of the 1st respondent in issuing Exhibit P6 series notices, without considering the recommendations in Exhibits P1 and P2 . Hence, the Writ Petition.

3. Before the writ court, the appellants have sought for the following reliefs:

> "(i) Call for the documents relating to Exhibits P1 to P8 peruse the same.
>
> (ii) Issue a writ of mandamus or any other writ, order or direction directing the 1st respondent to reconsider the case of petitioners for revival based on the recommendations made by the State Government and issue orders accordingly.

> (iii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the Bank to keep in abeyance all further proceedings pursuant to Ext.P6, P6(b), P6(c) and P6(d) notices, till fresh applications as per the cashew revival proposals are considered.
>
> (iv) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent to restructure/regularize the loan accounts of the petitioner as directed by the 2nd and the 3rd respondents.
>
> (v) Issue a writ in the nature of declaration that the petitioners are entitled to get the benefit of Ext.P2 Government Order."

4. Referring to various decisions of the Hon'ble Supreme Court, writ court, refused to entertain writ petition on the ground that an alternate remedy is available, and by judgment dated 13.11.2020 in W.P(C). No.5232 of 2020, dismissed the writ petition filed for the above said reliefs.

5. Being aggrieved, instant appeal is filed by the appellants on the following grounds:

> "A. It is well settled that a Writ Petition can be held maintainable even when a statutory alternate remedy is available, depending on the facts of the case. It is submitted that the learned Single Judge ought to have considered that the appellants were merely seeking for a stay of the proceedings, which comes well within the jurisdiction of this Court. Merely on the ground of there being an alternate remedy available to the appellants, the

learned Single Judge ought not to have dismissed the Writ Petition.

B. Learned Single Judge failed to see the falsity of the claims made by the respondent bank. Despite there being a proof of submission of all the necessary documents by the appellants for their consideration in the revival plan, the respondent bank falsely claimed to not be in receipt of such documents which was erroneously upheld by the writ court, to the adverse interest of the appellant.

C. Learned Single Judge ought to have considered the fact that the Government have specifically directed the banks to provide the requisite financial assistance for the revival scheme of Cashew Processing Units, of which, the appellant' units are specifically endorsed. Given such a situation, it is only legitimate for the appellants to expect that their applications would be favourably considered. However, even before consideration of their application, the respondent bank has initiated proceedings under the SARFAESI Act, 2002, in total violation of the tenates of natural justice.

D. It is submitted that during such a time of global pandemic, the respondent bank ought to have shown more indulgence in assisting the revival and resurrection of the appellants' units. However, without any humanitarian consideration or legal backing, the respondent bank has initiated proceedings under the SARFAESI Act which warrants interference of this Court.

E. Learned Single Judge has erroneously concluded that the appellants have sought for a prayer to quash the proceedings under SARFAESI Act when in actuality, the appellants have only prayed for a stay until their applications for revival are considered. It is submitted that the impugned judgment has been delivered, without a proper appraisal of the facts of the matter.

F. The prayer in the writ petition is not mere challenge of SARFAESI proceedings initiated against the appellants. The issue ought to have been viewed in a wider perspective, as the appellants sought for redressal of their grievances as the 1st respondent bank failed to honour the guidelines enumerated by respondents 2 & 3 to revive the sinking cashew units; which are the backbone of the economy as far as the Kollam District/Kerala is concerned.

G. The litigation before the learned DRT will be a time consuming process and by the time the learned Tribunal considered the issue and passed an order purely based on technical contention, the chances to revive the units would be bleak, as the 1st respondent bank has decided to proceed with coercive steps to conduct sale of secured assets. Appellants expected a speedy and efficacious remedy from this Court within a limited prayer to consider the revival scheme in proper way.

H. Learned Single Judge has given a total go bye and shut his eyes to the order of this Court in W.P.(C)

> No.9400 of 2020, wherein this Court in regard to the aspect of initiation/continuation of recovery proceedings against defaulters keeping in mind the prevailing situation of Covid-19 pandemic has been interdicted and has passed an interim order directing all the banks not to proceed with recovery proceedings with respect to the loan accounts, especially which are classified as Non Performing Assets. The same has also been directed to be extended even to the aggrieved parties, who have not approached any judicial forum. In the said Writ Petition, the 1st respondent Bank was also a party. It is further submitted that the Hon'ble Supreme Court has also passed orders in the above line. In the above circumstances, it was only just and proper on the part of the learned Single Judge, to extend the stay which was granted in the above matter, rather than dismissing the above Writ Petition, putting the cashew industry in a much irreparable stature. Moreover, the learned Single Judge ought to have directed the 1st respondent to show the consideration observed by the Full Bench of this Court in the similar matters as stated above."

6. Inviting attention of this court to the constitution of a Committee by the Government to consider restructuring loans/restructuring of advance to Micro, Small and Medium Enterprises, circulars issued by Reserve Bank of India, suggestions of the Committee for assessing the financial viability of the cashew processing units that are facing crisis, decision of the Committee that Ashkar Cashew Industries and Sinan

Cashews require only additional finance, Exhibit R1(b) letter of Canara Bank addressed to Ashkar Cashew Industries regarding non-furnishing of documents so as to enable them to take up viability study, reply of Sinan Cashew, Kollam, addressed to Canara Bank dated 26.3.2019, and non consideration of the documents, Mr. Millu Dandapani, learned counsel for appellants submitted that there is failure on the part of the Bank to adhere to the scheme for restructuring of the Micro, Small and Medium Enterprises. He, therefore, submitted that the reliefs sought for in the writ petition ought to have been considered by the writ court, instead of dismissing the same, on the ground of availability of alternate remedy.

7. Posed with the question as to whether the appellants have submitted any representation or objection to the notices issued under Section 13(2) of the SARFAESI Act, 2002, on various dates, learned counsel for the appellants candidly submitted that no representation/ objections were submitted to the Bank. He also submitted that after the filing of this writ appeal, the bank has issued notice under Section 13(4) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002.

8. Chapter III of the Securitisation And Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 deals with Enforcement of Security Interest. Section 13 (2) of the Act reads thus:

> "**13. Enforcement of security interest**.– (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).
>
> Provided that– (i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and
>
> (ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee."

9. Section 13 (3A) of the said Act, enables the borrower to make any representation or raise any objection. Section 13(3A) reads thus:

> "(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

> (3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:
>
> PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A."

10. Admittedly, the appellants have not submitted any representation or raised any objection, though notices have been issued under Section 13(2) of the SARFAESI Act, 2002, on various dates. Instead, the appellants have blamed the respondent bank that the Scheme propounded by the Government, circulars issued by the Reserve Bank of India, and documents furnished by them have not been considered. Unless and until the bank was put to notice, by way of representation/objection under Section 13(3A) of the SARFAESI Act, 2002, it would not be appropriate to blame the Bank.

11. Now that, notice under Section 13(4) of the SARFAESI Act, 2002 has also been issued and it is the contention of learned counsel

for appellants that publication has also been effected.

12. In the light of the statutory provisions extracted supra, at this juncture, we can only say that there cannot be any collateral challenge to the proceedings impugned in the writ petition. When a *prima facie* view was expressed by this Court that a writ petition is not maintainable, learned counsel for the appellants submitted that steps would be taken to challenge the possession notice issued under Section 13(4) of the SARFAESI Act, 2002.

13. However, having regard to the benefit of stay of impugned proceedings, which the appellants have enjoyed for nearly eight months, pending disposal of the writ petition, learned counsel for the appellants prayed to direct the Bank not to proceed further.

14. Going through the impugned judgment in W.P(C). No.5232 of 2020 dated 13.11.2020, we find that the writ court had declined to grant the reliefs prayed for, only on the ground of availability of alternate remedy and that, merits of the case have not been considered. We do not find any error in the impugned judgment.

15. In the light of the above, while declining to interfere with the impugned judgment, it is open to the appellants to challenge the possession notice issued under Section 13(4) of the SARFAESI Act, 2002, and if any such application under Section 17 of the SARFAESI Act, 2002 is preferred, the Tribunal shall consider all the tenable

contentions and pass appropriate orders. If any application for interim order is preferred, the same shall also be considered, as expeditiously as possible.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

sou.
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# APPENDIX

**PETITIONER'S EXHIBITS**

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| **ANNEXURE A** | **TRUE COPY OF THE RECEIPT OF DOCUMENTS OF THE 2ND APPELLANT ISSUED BY THE 1ST RESPONDENT.** |