IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 23RD DAY OF JANUARY 2024 / 3RD MAGHA, 1945

WP(C) NO. 1140 OF 2024

PETITIONERS:

1 KRISHNAKUMAR
AGED 48 YEARS
S/O M.K. RAJASEKHARAN NAIR, MUTHUKADATHUMALAYIL,
CHIRAYIRAMBU P O , THOTTAPPUZHASSERY,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT,
PIN – 689550

2 SANTHAKUMARI K
AGED 86 YEARS
W/O M.K. RAJASEKHARAN NAIR, MUTHUKADATHUMALAYIL,
CHIRAYIRAMBU P O , THOTTAPPUZHASSERY,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT,
PIN – 689550

BY ADVS.
M.T.SURESHKUMAR
MANJUSHA K
SREELAKSHMI SABU
RESWIN A. KHADIR

RESPONDENTS:

1 THE KERALA STATE CO-OPERATIVE BANK LTD
REGIONAL OFFICE, T B NO. 104,
OPPOSITE MUNICIPAL TOWN HALL, ALAPPUZHA.
REPRESENTED BY THE AUTHORISED OFFICER,
KERALA STATE CO-OPERATIVE BANK, THIRUVALLA AREA,
PIN – 688011

2 AUTHORISED OFFICER
KERALA STATE - CO-OPERATIVE BANK LTD,
THIRUVALLA AREA, REGIONAL OFFICE, T B NO. 104,
OPPOSITE MUNICIPAL TOWN HALL, ALAPPUZHA,
PIN - 688011

3 BRANCH MANAGER
MARAMON BRANCH,
KERALA STATE CO-OPERATIVE BANK LTD.,
MARAMON , KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT, PIN – 689549

BY ADV N. RAGHURAJ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 23rd day of January, 2024

The petitioners have approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Kerala State Co-operative Bank to the petitioners, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid ₹25 lakhs to the petitioners as Mortgage Loan in the year 2018. The petitioners state that though the petitioners made remittances promptly during the initial repayment period of the financial advance, they could not pay the repayment installments promptly later. The repayment of loan fell into arrears. It happened due to reasons beyond the control of the petitioners.

3. Though the petitioners requested the Bank to permit the petitioners to repay the overdue amounts in easy monthly installments, the Bank authorities were not yielding. The authorities, instead started coercive proceedings invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002 and issued Ext.P1 notice.

4. The petitioners state that they are still in a position to clear the overdue amounts towards the loan, if sufficient time is given to clear the dues in easy monthly installments. If the respondents are permitted to continue with the coercive proceedings and auction the secured assets provided by the petitioners, they will be put to untold hardship and loss.

5. Standing Counsel entered appearance on behalf of the Bank and denied all the statements made by the petitioners. On behalf of the respondents, it is submitted that the loan was given to the petitioners in the year 2018. The

petitioners committed default in repaying the loan.

6. The Bank repeatedly reminded the petitioners and required them to clear the dues. The petitioners deliberately omitted to do so. In the circumstances, the Bank had no other go than to proceed against the petitioners invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The impugned Ext.P1 notice was issued in these circumstances. The petitioners have not advanced any legal reasons to thwart the coercive proceedings initiated by the Bank.

7. The Standing Counsel, however, submitted that if the petitioners are ready and willing to make a substantial payment soon and remit the balance overdue amount immediately thereafter, a short breathing time can be granted to the petitioners to clear the dues. The Standing Counsel submitted that the outstanding amount due to the Bank from the petitioners as on 23.01.2024 is ₹26,01,450/- and the

overdue amount as on 23.01.2024 is ₹10,39,559/-.

8. I have heard the counsel for the petitioners and the Standing Counsel representing the Bank.

9. The specific case of the petitioners is that the petitioners have been making the repayment and maintaining the loan account initially. The default in repayment of the loan occurred lately due to reasons beyond the control of the petitioners. The petitioners have provided substantial security which will safeguard the interest of the Bank.

10. In the facts and circumstances of the case, I am inclined to dispose of the writ petition giving a short and reasonable time to the petitioners to clear off the liability.

11. The writ petition is therefore disposed of with the following directions:

(i) The petitioners shall remit the balance overdue amount of ₹10,39,559/- in 12 consecutive and equal monthly installments along with accruing interest and other Bank

charges, if any. First of such installments shall be paid on or before 23.02.2024.

(ii) If the petitioners commit default in making payments as directed above, the respondents will be at liberty to continue with the coercive proceedings against the petitioners in accordance with law.

(iii) The petitioners shall also pay current EMIs along with the aforesaid payments.

(iv) If the petitioners make payments as directed above, coercive proceedings, if any, against the petitioners shall stand deferred.

Sd/-

N.NAGARESH

JUDGE

hmh

APPENDIX OF WP(C) 1140/2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 13 (2) OF THE SARFAESI ACT DATED 1-9-2023**
Exhibit P2	**TRUE COPY OF SUMMONS DATED 15-11-2023 ISSUED AGAINST THE 1ST PETITIONER**
Exhibit P3	**TRUE COPY OF SUMMONS DATED 15-11-2023 ISSUED AGAINST THE 2ND PETITIONER**