IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

WP(C) NO. 2206 OF 2024

PETITIONER:

JAYAMOHANAN
AGED 65 YEARS
MANAGING DIRECTOR OF MALANADU TOURISAM COMPANY PVT. LTD., EDAKKAL, AMBALAVAYAL P.O., WAYANAD RESIDING AT PRIYA BHAVAN HOUSE, AMBALAVAYAL POST, SULTHAN BATHERY TALUK WAYANAD DISTRICT, PIN – 673593

BY ADVS.
C.K.SREEJITH
S.VEENA
SHIJU AUGUSTINE
KOZHITURATH PRASEETHA GOPALAKRISHNAN
RANI N.

RESPONDENT:

THE KERALA STATE CO-OPERATIVE BANK LTD. (KERALA BANK)
WAYANAD, KALPETTA NORTH,
REP. BY ITS AUTHORIZED OFFICER,
PIN – 673122

SRI.ATHUL SHAJI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of January, 2024

The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Kerala State Co-operative Bank Limited to the petitioner, 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 petitioner as Ordinary Loan in the year 2014. The petitioner states that though the petitioner made remittances promptly during the initial repayment period of the financial advance, he could not pay the repayment instalments promptly later. The repayment of loan fell into arrears later. It happened due to reasons beyond the control of the petitioner.

3. Though the petitioner requested the Bank to permit the petitioner to repay the overdue amounts in easy monthly

instalments, 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 petitioner states that he is still in a position to clear the overdue amounts towards the loan, if sufficient time is given to clear the dues in easy monthly instalments. If the respondent is permitted to continue with the coercive proceedings and auction the secured assets provided by the petitioner, he 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 petitioner. On behalf of the respondent, it is submitted that the loan was given to the petitioner in the year 2014. The petitioner committed default in repaying the loan.

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

7. The Standing Counsel, however, submitted that if the petitioner is 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 petitioner to clear the dues. The Standing Counsel submitted that the outstanding amount due to the Bank from the petitioner as on 17.01.2024 is ₹11,52,419/- and the overdue amount is ₹6,22,765/-.

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

9. The specific case of the petitioner is that the petitioner has 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 petitioner. The petitioner has 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 petitioner to clear off the liability.

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

(i) The petitioner shall remit the overdue amount of ₹6,22,765/- in 10 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 19.02.2024.

(ii) If the petitioner commits single default in making payments as directed above, the respondent will be at liberty to continue with the coercive proceedings against the petitioner in accordance with law.

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

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

Sd/-
N.NAGARESH
JUDGE

spk

APPENDIX OF WP(C) 2206/2024

PETITIONER EXHIBITS

Exhibit P1	**THE TRUE COPY OF THE NOTICE ISSUED U/S. 13(2) OF THE SARFAESI ACT DT. 16/12/2023**