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. 2485 OF 2024

PETITIONER:

ANTONY.M.V
AGED 54 YEARS, S/O. VARGHEES
RESIDING AT MYLADIYIL HOUSE KUNNAPPALLY
P.O.,PERINTHALAMNNA MALAPPURAM DT,
PIN – 679 322.

BY ADV
SURAJ.S

RESPONDENTS:

1 **THE URBAN CO-OPERATIVE BANK LTD NO.1758**
PERINTHALAMNNA BYE PASS BRANCH
REPRESENTED BY ITS BRANCH MANAGER
PERINTHALAMNNA, MALAPPURAM,
PIN – 679 322.

2 **THE AUTHORIZED OFFICER**
THE URBAN CO-OPERATIVE BANK LTD NO.1758
HEAD OFFICE,PERINTHALMANNA POST BOX NO.10
URBAN BUILDING, PATTAMBI ROAD MALAPPURAM DT,
PIN – 679 322.

BY ADVS.
JAYASREE K.P.
JOHN JOSEPH(K/000875/2019)

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 petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Urban Co-operative Bank 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 ₹15 lakhs to the petitioner as Housing Loan in the year 2019. 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 due to some unseen reasons. 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 Exts.P1 and P2 notices.

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 respondents are 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 respondents, it is submitted that the loan was given to the petitioner in the year 2019. 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. The loan account was declared as NPA in the year 2020. 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 Exts.P1 and P2 were 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 is ₹18,66,473/- and the overdue amount as on 23.01.2024 is ₹8,50,000/-.

8. I have heard the learned Counsel for the petitioner and the learned 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 his liability.

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

(i) The petitioner shall remit an amount of ₹2 lakhs on or before 22.02.2024.

(ii) The petitioner shall remit the balance overdue amount in subsequent consecutive eight equal monthly instalments thereafter,

along with accruing interest and other Bank charges, if any.

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

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

(v) If the petitioner pays the instalments as directed above, any coercive proceedings against the petitioner shall stand deferred.

Sd/-

N. NAGARESH
JUDGE

AMR

APPENDIX OF WP(C) 2485/2024

PETITIONER'S EXHIBITS

Exhibit P1	**A TRUE COPY OF THE NOTICE 01.03.2021UNDER SEC 13(2) OF THE SARFAESI ACT.**
Exhibit P2	**A TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DATED 17.01.2024 IN M.C.NO.1111 OF 2023.**