IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 26TH DAY OF FEBRUARY 2024 / 7TH PHALGUNA, 1945

WP(C) NO. 4288 OF 2024

PETITIONER:

KRISHNA KUMAR T.D
AGED 31 YEARS, S/O. DASAPPAN
THONGANTHARA VELIYIL NORTH ARYAD,
ALAPPUZHA DISTRICT, KERALA – 688542.

BY ADVS.
S.SHIV SHANKAR
JOSE ANTONY

RESPONDENT:

THE ALLEPPEY URBAN CO-OPERATIVE BANK LTD
NO. A-67, PITCHU IYER JUNCTION, CULLEN ROAD,
ALAPPUZHA KERALA REP BY ITS AUTHORIZED
OFFICER, PIN – 688011.

BY ADV AZAD BABU R

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 26th day of February, 2024

The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Alleppey 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 ₹12 lakhs to the petitioner as Housing Loan in the year 2021. The loan period is up to the year 2030. 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 due to financial constrains on account of the treatment expenses of his

mother. The repayment of loan fell into arrears. 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 invoking Rule 8(6) of the Security Interest (Enforcement) Rules, 2002.

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 2021. 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 notice 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 outstanding 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 26.02.2024 is ₹12,01,431/- and the overdue amount as on 26.02.2024 is ₹1,28,844/-.

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 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 an amount of ₹60,000/- on or before 20.03.2024.

(ii) The petitioner shall remit the balance outstanding amount in subsequent consecutive 10 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 respondent will be at liberty to continue with

coercive proceedings against the petitioner in accordance with law.

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

Sd/-
N. NAGARESH
JUDGE

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APPENDIX OF WP(C) 4288/2024

PETITIONER'S EXHIBITS

Exhibit P 1	**TRUE COPY OF THE SALE NOTICE DATED 01.01.2024 ISSUED BY THE RESPONDENT BANK**
Exhibit P2	**TRUE COPY OF THE RECEIPT DATED 9.2.2024 ISSUED BY THE RESPONDENT .**