(2021) 01 KL CK 0120

In the High Court Of Kerala

Case No : Writ Petition (C) No. 144 Of 2021

Abdul Gafoor	APPELLANT
Vs	
Kerala State Co-Operative Bank Ltd Kerala State Co-Operative Bank Ltd	RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0120

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : P.V. George, Gilbert George Correya

Judgement

1. Through this writ petition, the petitioner calls into question certain proceedings initiated and being pursued by the respondent Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act ('the SARFAESI Act' for brevity).

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondent Bank.

3. As I proceed to consider the reliefs prayed for by the petitioner herein, I am conscious that I am jurisdictionally proscribed from entering into any enquiry or consideration of the legality or otherwise of the orders impugned in this writ petition on account of the imperative statutory provisions and the binding judicial pronouncements, especially that of the Hon'ble Supreme Court in Union Bank of India v. Satyawati Tondon [(2010) 8 SCC 110] and in Authorised Officer, State Bank of Travancore and Another v. Mathew K.C. [2018 (1) KLT 784]. I, therefore, cannot and do not propose to consider any of the legal contentions raised by the petitioner on its merits.

4. However, obviously being aware of this, the learned counsel appearing for the petitioner has prayed that notwithstanding the limitations of jurisdiction as aforementioned, the petitioner may be granted some leniency or latitude in order

to enable him to pay off the overdue amounts in installments.

5. I, therefore, enquired with the learned counsel for the Bank as to whether the request on the part of the petitioner can be allowed, especially on account of the fact that the Banks are only interested in recovering and not in maintaining and keep pending litigations and legal proceedings against such recovery. The learned counsel has fairly submitted that the Bank is concerned about recovery at the earliest and that if the petitioner pays off the dues quickly, it would be to their interest also.

6. In view of the fact that the proceedings initiated by the Bank would consume time to culminate in total recovery and taking into account the financial constraints and burden that have been alleged and pleaded by the petitioner, I am inclined to dispose of this writ petition allowing him an opportunity to pay off the overdue amounts demanded by the Bank.

7. The learned counsel for the Bank at this time submits that the petitioner can be allowed to pay off the overdue amount of Rs.1,89,660/- as on 31.12.2020 in not more than ten instalments commencing from 05.02.2021 and that the account can thus be regularised by the Bank.

8. The learned counsel for the petitioner says that the petitioner is agreeable to the above offer made by the Bank and therefore that the writ petition may be ordered granting permission to the petitioner to pay off the amount in the manner as afore.

9. In such circumstances, I direct the petitioner to pay off the aforementioned overdue amount of Rs.1,89,660/- as on 31.12.2020, along with applicable charges and interest, in ten equal monthly instalments commencing from 05.02.2021. He shall also, in addition to this, pay the regular EMIs without fail. If such payment is made by the petitioner, his loan account would stand regularised and he would then be at liberty to service the account as per the terms of the loan sanctioned. It goes without saying that if there is any default in making the payment as directed above, the benefit granted under this judgment would stand vacated and the Bank will be at liberty to recover the entire liability from the petitioner by continuing with the proceedings from the stage it is on this date.

10. I make it clear that the directions in this judgment are peremptory in nature and that the petitioner will have to comply with the same meticulously. I caution the petitioner that no further requests for extension or modification of this judgment, save in exceptional circumstances, will be permitted and that if the petitioner fails to comply with the directions herein, he will lose the benefit of this judgment.

11. After I dictated this judgment, Sri.P.V.George - learned counsel for the petitioner, submitted that the overdues in Ext.P1 which is issued on 20.11.2020 is only Rs.1,62,542/- and therefore, that the aforementioned overdue appears to be excessive. He, therefore, prays that his client be also given liberty to

approach the Bank for reconciliation of the account.

It is needless to say that this liberty is always available to the petitioner and if he approaches the Bank with a suitable representation for the purpose of reconciliation of the account with respect to the overdue amounts, the same will be considered by the Bank and if there is any change in the amount as mentioned by the learned Standing Counsel, the said benefit will be permitted while he makes his installments in terms of this judgment.

The writ petition is ordered accordingly.

