(2007) 08 KL CK 0072

In the High Court Of Kerala

Case No : WP (C) No. 24645 of 2007

Ajith Kumar K.S. APPELLANT

Vs

Debts Recovery Tribunal and Others RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Citation : (2008) 1 KLJ 566

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Shoby K. Francis, for the Appellant; K.K. Chandran Pillai, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioner availed housing loan from the second respondent-Bank. Even though loan was granted in 2003 and petitioner had 15 years time to repay the instalments, loan was recalled on account of chronic default for nearly three years. Monthly instalment payable was Rs. 15,400/-. The prayer in the Writ Petition is for direction to respondents to grant time for the petitioner to settle the liability. Second respondent filed counter affidavit and opposed the plea on the ground that the petitioner was granted time by DRT and by this Court on an earlier occasion vide Ext. P6 judgment and petitioner committed default. However, I find justification for this Court to grant time once more for more than one reason. In the first place, petitioner has paid Rs. 3 lakhs on 30-7-2007 and the payment has wiped out instalment arrears for nearly two years. Secondly the scheme of repayment of loan originally granted is thoroughly unrealistic because without any material towards of petitioner''s monthly income, the Bank granted petitioner instalment scheme for payment at the rate of Rs. 15,400/- per month. If a man has to repay Rs. 15,400/- per month, he should necessarily earn above Rs. 30,000/- per month. Petitioner has no known source of regular income which is proved by default. Default happened because the Bank failed to forsee petitioner''s incapacity to honour the commitment. The only way for the petitioner to settle liability is to sell part or full property and I feel if petitioner sells the property, petitioner will be a net gainer and if the Bank sells the property in recovery proceedings, petitioner will be ruined. In the circumstances, I grant time till 30-11-2007 to the petitioner to sell property or otherwise to settle the liability. Petitioner is free to negotiate for sale of any part of, or full, property and can enter into agreement for sale. However, sale deed will be executed only after clearance from the Bank through payment or under arrangement for payment between the petitioner and the buyer acceptable to the Bank. Since time is granted on petitioner undertaking to settle the liability before 30-11-2007 there will be direction to the petitioner to vacate from the premises and hand over the entire property free of possession to the Bank to sell the property after 30-11-2007.

2. However, in between the petitioner shall not encumber or part with possession of the property without permission from the Bank, which can be granted on settlement of liability. If the petitioner commits default in payment or fails to hand over possession of the property and the building to the second respondent, there will be direction to the Sub Inspector of the local police station to evict the petitioner forcibly and hand over possession to the second respondent on his producing copy of this judgment and on making a request in this behalf. There will be direction to the respondents not to proceed with sale of the property or not to dispossess the petitioner from the premises until 30-11 -2007.

W.P. is disposed of as above.

