(2024) 02 KL CK 0078

In the High Court Of Kerala

Case No : Writ Petition (C) No. 4833 Of 2024

Ajithkumar APPELLANT

Vs

ICICI Bank Limited RESPONDENT

Date of Decision : 09-02-2024

Acts Referred:

Citation : (2024) 02 KL CK 0078

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : S.S.Viswajith Anand, Pranave R. Aravind, Rakhi V.R., Pradeesh Chacko

Final Decision : Disposed Of

Judgement

1. The petitioners have approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the ICICI Bank Limited to the petitioners, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid two Mortgage Loans, one Insta Loan and One Credit Card facility to the petitioners in the year 2020. The petitioners state that though the petitioners made remittances promptly during the initial repayment period of the financial advance, they could not pay the repayment instalments promptly later due to financial stringency. The repayment of loans fell into arrears later. It happened due to reasons beyond the control of the petitioners.

3. Though the petitioners requested the Bank to permit the petitioners 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.P2 notice.

4. The petitioners state that they are still in a position to clear the overdue

amounts towards the loans, 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 petitioners, they 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 petitioners. On behalf of the respondent, it is submitted that the loans were given to the petitioners in the year 2020. The petitioners committed default in repaying the loans.

6. The Bank repeatedly reminded the petitioners and required them to clear the dues. The petitioners deliberately omitted to do so. In the circumstances, the Bank had no other go than to proceed against the petitioners invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The impugned Ext.P2 was issued in these circumstances. The petitioners have not advanced any legal reasons to thwart the coercive proceedings initiated by the Bank.

7. The Standing Counsel, however, submitted that if the petitioners are 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 petitioners to clear the dues. The Standing Counsel submitted that the outstanding amount due to the Bank from the petitioners as on 07.02.2024 is ☐ 1,27,80,659/- and the overdue amount as on 07.02.2024 is ☐ 10,68,539/-.

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

9. The specific case of the petitioners is that the petitioners have 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 petitioners. The petitioners have 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 petitioners to clear off the liability.

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

(i) The petitioners shall remit ☐ 3 lakhs on or before 29.02.2024 and another ☐ 3 lakhs on or before 31.03.2024 and the balance overdue amount in three consecutive and equal monthly instalments along with accruing interest and other Bank charges, if any.

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

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

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