(2014) 03 KL CK 0086

In the High Court Of Kerala

Case No : WP(C). No. 5679 of 2014 (H)

Bineesh K.K. APPELLANT

Vs

Federal Bank Ltd. RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Citation : (2014) 03 KL CK 0086

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : E.V. Moly, Advocate for the Appellant; A. Antony, SC. and Smt. Leelamma Antony, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

P.R. Ramachandra Menon, J.—The petitioner has availed an over draft facility from the respondent Bank creating security interest over the property in question. But the repayment could not be effected promptly, when the respondent Bank proceeded against the petitioner by resorting to the remedy under the SARFAESI Act which in turn is under challenge in this writ petition.

2. The learned counsel for the petitioner submits that the default was never wilful, but due to some unforeseen circumstances and that the petitioner does not dispute the liability of the petitioner to clear the due amount or the rights and liberties of the respondent Bank in proceeding against the property. The limited relief now pressed before this Court is to permit the petitioner to clear the ''overdue'' amount, providing some breathing time in this regard and to have the loan account regularized. The learned counsel also submits that the petitioner does not intend to proceed with S.A. No. 270/2013 pending before the DRT.

3. The learned counsel appearing for the respondent Bank submits on instructions that, the total overdue amount will come around Rs. 6 lakhs and unless the petitioner clears the overdue amount as above, the loan account is not liable to be regularized.

4. After hearing both the sides, particularly, in view of the limited relief sought for, this Court finds it fit and proper to permit the petitioner to clear the ''overdue'' amount by way of ''ten'' equal monthly instalments, the first of which shall be effected on or before the 15th of April, 2014; to be followed by similar instalments to be effected on or before the 15th working day of the succeeding months. This shall be in addition to the satisfaction of the regular EMIs as well. Subject to this, the coercive proceedings being pursued against the petitioner shall be kept in abeyance for the time being and the loan account shall stand regularized. It is made clear that, if any default is committed with regard to repayment of the over due amount as above, or if any two consecutive defaults are made with regard to the regular EMIs, it will be open for the respondent Bank to proceed against the petitioner for realization of the entire amount in a lump, from the stage where it stands now. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the respondent for further steps.

Writ petition is disposed of.

