(2013) 07 KL CK 0117

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 17055 of 2013 (F)

Fathimath Zuhra APPELLANT

Vs

The Syndicate Bank and B.M. Aboobacker RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 13(4)

Citation : (2013) 07 KL CK 0117

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : T. Madhu and Smt. C.R. Saradamani, for the Appellant; R.S. Kalkura, SC for R1 and R2, for the Respondent

Final Decision : Disposed Off

Judgement

A.M. Shaffique, J.—The petitioner has approached this Court when she is faced with notice u/s 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act). The owner of the property is one Sri. Aboobacker, husband of the petitioner. According to the petitioner, her husband had married another person and is living separately. The property secured is the property in which the petitioner and her children are residing. If further proceedings are taken, the petitioner will be thrown out to the streets. The petitioner submitted that she is ready and willing to discharge the debt of the bank so that she can continue to reside in the said property. The learned Standing Counsel appearing for the bank submits that since no payment has been made, the bank was entitled to take appropriate proceedings for taking possession of the property under the SARFAESI Act and notice u/s 13(4) had been issued after complying with the procedure of issuance of notice u/s 13(2) of the SARFAESI Act. However, the learned Standing Counsel for the bank would submit that they are only interested in receiving the entire amount covered by the notice.

2. Having regard to the facts and circumstances involved in the matter, especially the plight of the petitioner and her minor children, I am of the view that some indulgence has to be shown in favour of the petitioner especially in an instance were she is ready and willing to discharge the debt due to the bank so that it will enable her to reside in the premises which she is living. In the result, this writ petition is disposed of as under:

i) The petitioner shall discharge the debt due to the first respondent bank in respect of the loan which is the subject matter of the above writ petition by paying an amount of Rs. 30,000/- per month until the entire amount is paid.

ii) If there is any default in payment of two instalments, it shall be open for the first respondent bank to continue the proceedings in terms with the notice issued at Ext.P3.

iii) If the instalments are paid in time, further proceedings shall be kept in abeyance.

iv) The first instalment shall be paid on or before 1.8.2013 and the balance instalment shall be paid on the first of every succeeding month.