(2013) 01 KL CK 0195

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 30053 of 2012 (F)

Jayasree APPELLANT

Vs

The South Indian Bank Limited RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : (2013) 01 KL CK 0195

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : S. Muhammed Haneef, for the Appellant; K.K. John, SC, South Indian Bank and Sri. Asish K. John for R1, for the Respondent

Judgement

Justice Antony Dominic, J.—Petitioner''s husband availed of a housing loan from the respondent Bank in 2006. To that loan of Rs. 7,00,000/-, petitioner was the guarantor. It appears that her husband died in an accident on 26/5/2007. Default was committed in the repayments and finally the Bank filed OS No. 1011/09 before the Sub Court, Kollam. The suit was decreed ex parte on 31/8/2010. Subsequently the Bank filed OA No. 349/12 before the Debts Recovery Tribunal, Ernakulam. The OA is pending. Simultaneously SARFAESI proceedings were initiated and finally Ext. P2 possession notice was issued. It is in this situation, the petitioner has filed this writ petition and the prayer made by the petitioner is to direct the Bank to regularise the loan. This request of the petitioner is opposed by the Bank pointing out the above facts. Admittedly, the loan was granted in the name of the petitioner''s deceased husband and the regularisation can only be in the name of the loanee alone. Therefore, if the loan is to be continued in the name of the petitioner, the Bank will have to grant a fresh loan. This Court cannot compel the unwilling Bank to agree to such a process. In such circumstances, I feel the best order the petitioner can aspire for is one of an instalment facility.

Taking note of this, I dispose of this writ petition directing that, within one month from today, petitioner will deposit with the Bank an amount of Rs. 3,00,000/-

(Rupees three lakhs only) in partial discharge of the liability. If payment is made as above, she will also be allowed to pay the balance amount in 20 monthly instalments. The first instalment shall be paid on or before 28/2/2013 and the subsequent instalments shall be paid on or before the last working day of every succeeding month. Subject to payment as above, coercive action now initiated will stand deferred and in case default is committed, Bank will be free to continue the recovery action. It is also clarified that this judgment will not stand in the way of the petitioner in seeking the benefit of any concessional schemes, which may be introduced by the Bank.