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(2021) 01 KL CK 0118

In the High Court Of Kerala

Case No : Writ Petition (C) No. 164 Of 2021

Kannan T — APPELLANT

Vs

Assistant General Manager State Bank Of India And Ors — RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0118

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : I. Dinesh Menon, Jawahar Jose

Judgement

1. The petitioner concedes that he has availed of certain large loan facilities from the respondent - State Bank of India (hereinafter referred to as 'the Bank' for short) and has approached this Court impugning Ext.P1 notice of sale issued by the said Bank for sale of secured asset.

2. According to the petitioner, he has been always willing and ready to pay off the loan liability, but that on account of the fact that he has been classified incorrectly and illegally as a "willful defaulter", he has been mulcted with larger penalties and detriment, thus incapacitating him from liquidating the liability. The petitioner, therefore, prays that Ext.P1 be set aside and the Bank be directed to allow him to settle the loan liability under the One Time Settlement Scheme, as is discernible from Ext.P3.

3. In response to the submissions of Shri.I.Dinesh Menon, learned counsel for the petitioner as afore, Shri.Jawahar Jose, learned counsel for the respondents, submitted that the petitioner is not entitled to seek settlement of the loan liability under Ext.P3 because he did not even pay the first instalment under it until now. He submitted that the term of the said One Time Settlement is now over; but added that the petitioner has been offered another settlement at Rs.3 Crores and that if he pays this amount within a period of one month, the loan liabilities will stand fully liquidated. He added that this is the best offer that the

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Bank can offer to the petitioner, because, as per the accounts, more than Rs.23.23 Crores is due from him, in three loan accounts and that Ext.P1 has been issued for recovery of the same.

4. Shri.Jawahar Jose, therefore, prayed that either the petitioner be directed to pay Rs.3 Crores within a period of one month from today in full and final settlement of all the three loan accounts; or that this Court dismiss this writ petition, finding it be not maintainable.

5. It is indubitable, going by the affirmative declarations of the Hon'ble Supreme Court in Union Bank of India v. Satyawati Tondon [2010 (8) SCC 110] and in Authorised Officer, State Bank of Travancore and Another v. Mathew K.C. [2018 (1) KLT 784], that the jurisdiction of this Court in dealing with matters arising under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act ('the SARFAESI Act' for brevity) is severely restricted and even proscribed.

6. However, since the Bank now offers that the petitioner can be allowed to liquidate the loan liability by payment of Rs.3 Crores within a period of one month from today, I asked Shri.I.Dinesh Menon - accepting this suggestion.

7. Shri.I.Dinesh Menon, in response, submitted that since his client has no other option, he will agree to the offer now made by the Bank and thus prayed that this Court order this writ petition on such terms.

In the afore circumstances, without entering into the merits of any of the dialectical contentions of the parties, I order this writ petition and direct the Bank to defer the sale of the properties, as notified through Ext.P1, until 05/02/2021; with a concomitant direction to the petitioner to pay an amount of Rs.3 Crores - which is stated to be the One Time Settlement figure - so as to liquidate the liability in all the three loan accounts, on or before 05/02/2021.

It goes without saying that if the petitioner pays the amounts as afore directed and within the time granted, then the Bank will cease all further proceedings pursuant to Ext.P1 and return the title documents of the secured assets to the petitioner or to the mortgagor, as the case may be; but if on the contrary, the petitioner defaults in payment as ordered above, the Bank will be at liberty to continue further proceedings from the stage at which it is available today based on Ext.P1 for sale of the secured assets without having to seek any further orders from this Court.

At this time, Shri.Jawahar Jose brought to my notice a practical difficulty that may be faced by the Bank when the sale is deferred, namely, that a fresh sale notification will have to be published, should the petitioner default payment in terms of this judgment.

This certainly is an issue that the Bank will have to face and I, therefore, asked Shri.I.Disnesh Menon, learned counsel for the petitioner, whether his client will suffer the cost of the said publication also, if it becomes so warranted.

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Shri.I.Dinesh Menon, in answer submitted that his client will take full responsibility for this and that if he is unable to make payment as per this judgment, the Bank may left liberty to charge the amount for the next publication also to his account. He also submitted that his client will not insist on a fresh publication in such event and that the Bank may be left liberty to take a decision on this appropriately. This is recorded.

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