
(2022) 11 KL CK 0285
In the High Court Of Kerala
Case No : Writ Appeal No. 1730 Of 2022

Meenakshi.S.K

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 24-11-2022

Acts Referred:

Citation : (2022) 11 KL CK 0285

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : T.R.S.Kumar, Deena Joseph, Deepa R Menon, Mithun C Thomas, Akshay Joseph Adhikaram, Swarna Thomas, Thusharkrishnan K.U., Sona Maria Paulose,

Final Decision : Dismissed

Judgement

S. Manikumar, CJ

1. Before the writ court, appellants/ writ petitioners have sought for the following reliefs:

- 1) Issue a writ in the nature of certiorari calling for the records relating to Exhibit P4 and quash the same;
- 2) An order of stay of all further proceedings pursuant to Exhibit P3 and P4 pending disposal of the writ petition;
- 3) Issue a writ of mandamus or any other appropriate writ or order or direction directing the respondent to restore Exhibit P2 OTS scheme and grant the petitioner reasonable time for repaying the OTS amount in 12 months.

2. After adverting to the rival submissions, in particular, the plight and conduct of the appellants that they have not even made the upfront payment through 'One Time Settlement Scheme', also of the fact that an Original Petition has already been filed before the Tribunal, and that the same is pending consideration, and that writ petition was fled just before the sale, writ court, vide judgment dated

22.09.2022 in W.P.(C) No. 30095 of 2022, ordered thus:

4. Having heard the learned counsel for the petitioners and the learned counsel appearing for the respondent Bank and taking into consideration the fact that the 2nd petitioner is a senior citizen and also that the secured asset which has been brought to sale is the residential house of the petitioners, this writ petition is disposed of in the following manner.

i. The petitioners shall pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) towards the liability on or before 26/09/2022;

ii. The balance amount which is stated to be Rs.72,63,392/- (Seventy Two Lakhs Sixty Three Thousand Three Hundred and Ninety Two Only) along with any accrued interest and cost will be paid in six equal monthly instalments;

iii. The first instalment shall be paid on or before 15.10.2022 and the subsequent instalments shall be paid on or before the last working day of the succeeding months; iv. In the event of default of any one installment, the respondent bank shall be entitled to proceed in accordance with law; v. In order to enable the petitioner to repay the entire amounts, the confirmation of the sale shall be adjourned.

Notwithstanding the directions contained in this judgment, it will always be open to the petitioners to approach the Bank for One Time Settlement and if any such proposal is made by the petitioners, the same shall be considered in accordance with the norms of the Bank. If any such proposal for One Time Settlement is accepted, the petitioners will be governed by the terms of the settlement notwithstanding the directions contained in this judgment. On complying with the directions contained in this judgment, confirmation of the sale shall be deferred. The sale (if any) shall be cancelled if all the directions contained in this judgment are complied with or if the matter is settled under One Time Settlement."

Being aggrieved, instant appeal is filed.

3. Even though Mr. Akshay Joseph Adhikaram, learned counsel appearing for the appellants, made submissions on the grounds raised, we are not inclined to interfere with the impugned judgment, for the reason that the writ court has considered the case of the appellants and granted indulgence, permitting them to pay the outstanding amount in instalments.

4. That apart, it can be seen from Annexure A1 sale notice issued under the proviso to Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 that, sale is scheduled to be held on 24.11.2022 at 11 a.m. i.e., today. Annexure A1 is not a document which is produced before the writ court. What was challenged before the writ court was Exhibit P4 sale notice dated 16.08.2022, as per which sale was fixed on 27.09.2022.

5. Arguments are advanced on the basis of Annexure A1 sale notice dated 31.10.2022, which is a document issued subsequent to the filing of the writ

petition. In other words, new facts are sought to be introduced in the writ appeal, assailing the correctness of the impugned judgment, which is not permissible under law.

In the light of the above discussion, we are not inclined to interfere with the impugned judgment. Accordingly, this writ appeal is dismissed.