

(2021) 01 KL CK 0474

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35847 Of 2019

Mishiyas K

APPELLANT

Vs

Secretary, Chakkittapara Service Co-Operative Bank And Ors

RESPONDENT

Date of Decision : 21-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0474

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : E.A. Bijumon, P.C. Sasidharan

Final Decision : Disposed Of

Judgement

1. The petitioner states that he had availed a business loan of Rs.10 lakhs from the Chakkittapara Service Co-operative Bank in the year 2014. The property having an extent of about 11 cents was mortgaged by way of security. The petitioner managed to remit the monthly instalments in time till the year 2017. However, his business met with huge losses and as a result, he committed default. On 25.5.2019, Ext.P1 notice was issued demanding a sum of Rs.20,27,054/-. It is pointed out that the amount claimed in the notice is highly inflated. In the said circumstances, he approached this Court and filed a writ petition challenging the notice issued under Rule 81(1) of the Kerala Co-operative Societies Rules. This Court, taking note of the fact that the bank has already secured an award by filing an arbitration case, directed the petitioner to approach the Sale Officer. The petitioner states that though he approached the Sale Officer and filed Ext.P3 objections, the same was not considered. It is in the afore circumstances that the petitioner is before this Court seeking to set aside the entire proceedings and also for a

direction to the respondents to proceed against the petitioner only for realizing the actual liability.

2. I have heard Sri. Biju Mon E.A., the learned counsel appearing for the petitioner and Sri. P.C. Sasidharan, the learned standing counsel appearing for the respondent Bank.

3. It is submitted by the learned counsel appearing for the petitioner that the sole request of the petitioner is for a breathing time to clear the amounts due from him to the bank. According to the learned counsel, his financial condition has been in total disarray due to the restrictions imposed due to the pandemic. He submits that if the petitioner is granted 15 instalments, he would manage to pay off the entire amounts due to the bank.

4. Sri. P.C.Sasidharan, the learned counsel, has seriously opposed the prayer. It is submitted that the amount due as on 25.5.2019 is Rs.20,27,054/- and as on date, the amount due is much more. The only remittance made by him is the sum of Rs.2 lakhs which was paid as ordered by this Court on 27.12.2019.

5. I have heard the learned counsel for the petitioner as also the learned counsel for the respondent bank.

6. I have anxiously considered the submissions advanced. The records reveal that the bank had filed an arbitration case and has secured an award.

Execution proceedings have been initiated and steps are being taken to attach and sell the mortgaged property. The petitioner contends that it was due to the effects of the pandemic that he was unable to amass the requisite amount to pay off the amounts due to the bank.

7. Having considered the entire facts, I am of the view that an opportunity can be granted to the petitioner herein to clear off the amount in 12 equal monthly instalments.

8. In the result, this writ petition is disposed of on the following terms:

- i) The petitioner shall appear before the 1st respondent on or before 5.2.2021 and on his appearance, a statement showing the amount due from the petitioner together with lawful interest as per the award in the ARC shall be quantified and the same shall be handed over.
- ii) The respondents shall grant twelve equal monthly instalments and the first instalment shall be payable on 15.2.2021.

- iii) The recovery proceedings shall be kept in abeyance if the petitioner continues to pay the amounts as ordered by this Court without any default.
- iv) On the petitioner committing default of payment of any one instalment, the respondents may recommence the recovery proceedings.
- v) If any amount towards interest is due, the respondents shall inform the petitioner before the payment of the 11th instalment is made and the petitioner will be bound to clear the same within a period of 30 days.
- vi) Under no circumstances, shall any extension be granted to comply with the directions in this order.