(2021) 01 KL CK 0131

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37 Of 2021

Mohammed Musthafa	APPELLANT
Vs	
Kerala State Co-Operative Bank Ltd And Ors	RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0131

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : S. Mumtaz, Gilbert George Correya

Judgement

1. The essential challenge pitched by the petitioner is against certain proceedings that have been initiated by the respondent Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act ('the SARFAESI Act' for brevity).

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondent Bank.

3. I am conscious that I am jurisdictionally proscribed from entering into any enquiry or consideration of the legality or otherwise of the orders impugned in this writ petition on account of the imperative statutory provisions and binding judicial pronouncements especially that of the Hon'ble Supreme Court in Union Bank of India v. Satyawati Tondon ((2010) 8 SCC 110) and followed recently in Authorised Officer, SBT v. Mathew (ILR 2018 (1) Ker. 479). I, therefore, do not propose to consider any of the contentions raised by the petitioner on merits.

4. However, obviously being aware of this issue, the learned counsel appearing for the petitioner has prayed that notwithstanding the limitations of jurisdiction as aforementioned, the petitioner may be granted some leniency or latitude in order to enable him to pay off the overdue amounts in instalments.

5. I have enquired with the learned counsel for the Bank as to whether the

request on the part of the petitioner can be allowed, especially on account of the fact that the Banks are only interested in recovering and not in maintaining and keep pending litigations and legal proceedings against the recovery. The learned counsel has fairly submitted that the Bank is concerned about recovery at the earliest and that if the petitioner pays off the dues quickly, it would be to their interest also.

6. In view of the fact that the proceedings initiated by the Bank would consume time to culminate in total recovery and taking into account the financial constraints and burden that have been alleged and pleaded by the petitioner, I am inclined to dispose of the writ petition allowing him an opportunity to pay off the overdue amounts demanded by the Bank.

7. The learned counsel for the Bank at this time submits that the petitioner can be allowed to pay off the over due amount of Rs.30,25,834/- in not more than 12 instalments commencing from 05.02.2021 and that the account can thus be regularised by the Bank.

8. The learned counsel for the petitioner says that the petitioner is agreeable to the above offer made by the Bank and therefore, that the writ petition may be ordered granting permission to the petitioner to pay off the amount in the manner as afore.

9. In such circumstances, I direct the petitioner to pay off the overdue amount of Rs.30,25,834/- as on 31.12.2020, along with applicable charges and interest, in 12 equal monthly instalments commencing from 05.02.2021 He shall also in addition to this pay the regular EMIs without fail. If such payment is made by the petitioner, his loan account would stand regularised and he would then be at liberty to service the account as per the terms of the loan sanctioned. It goes without saying that if there is any default in making the payment as directed above, the benefit granted under this judgment would stand vacated and the Bank will be at liberty to recover the entire liability from the petitioner by continuing with the proceedings from the stage it is on this date.

I make it clear that the directions in this judgment are peremptory in nature and that the petitioner will have to comply with the same meticulously.

The writ petition is ordered accordingly.