(2012) 07 KL CK 0239

In the High Court Of Kerala

Case No : WP (C) . No. 15632 of 2012 (D)

Pramod Kumar and Rethi Pramod Kumar APPELLANT

Vs

The Pathanamthitta District Co-Operative Bank Ltd. RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14

Citation : (2012) 07 KL CK 0239

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : K. Shaj, Sri. Sajju. S and Sri. Praveen Thomas Abraham, for the Appellant; Varghese M. Easow Advocate, SC, CO-OP Bank Ltd., for the Respondent

Judgement

Justice P.R. Ramachandra Menon

1. The petitioner availed a housing loan of Rs.8.00,000/- (Rupees eight lakhs only) from the first respondent Bank on the strength of the security created over the property having an extent of 10.12 Ares of land. The repayment however, could not be effected as scheduled, under which circumstance the Bank proceed with steps were taken under the SARFESI Act including by filing a petition u/s 14 before the concerned CJM Court for appointing an ''advocate-commissioner'' for taking physical possession of the property as borne by Ext.P2, which in turn is challenged in this writ petition. The learned counsel for the petitioner submits that the default was never wilful, but because of some unforeseen circumstances. It is also stated that petitioner does not dispute the liability on any head, nor is there any dispute with regard to the rights and liberties of the Bank in resorting to the remedy under the SARFAESI Act. The only relief now pressed before this Court is to permit the petitioner to clear the ''overdue'' amount by granting some breathing time and to continue to satisfy the regular EMIs without fail.

2. The learned counsel for the Bank submits on instructions that a total sum of Rs. 9.93 lakhs is due to close the loan account, out of which, nearly Rs. 2 lakhs is in respect of the defaulted instalments. Unless the petitioner satisfies the entire ''overdue'' amount as above, the loan account is not liable to be regularized, submits the learned counsel. After hearing both the sides, this Court finds it fit and proper to permit the petitioner to clear the ''overdue'' amount by depositing a sum of Rs. 2 lakhs by way of ''three'' equal monthly instalments, the first of which shall be effected on or before the 30th of this month; to be followed by similar instalments on or before the 30th of the succeeding months. Subject to this the loan account will stand regularized. This shall be in addition to the liability of the petitioner to clear the regular EMIs as well. The coercive proceedings shall be kept in abeyance for the time being. It is made clear that, if any default is committed with regard to repayment of the ''overdue'' amount in respect of defaulted instalments or if any two consecutive defaults are made with regard to the regular EMIs, it will be open for the respondent Bank to proceed against the petitioner and the assets for realization of the entire amount in lump, from the stage where it stands now.

Writ petition is disposed of.

