(2021) 01 KL CK 0122

In the High Court Of Kerala

Case No : Writ Petition (C) No. 135 Of 2021

Sabu A.A — APPELLANT

Vs

Authorized Officer And Ors — RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0122

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : B. Krishna Mani, Dhanuja M.S, Leo George

Judgement

1. The petitioner, who admittedly is the defaulter of a loan facility availed of from the respondent-Bank, has approached this Court with a rather strange request, that the Bank be directed to permit him to sell the secured assets one after the other, so as to obtain a closure of the entire liability in the loan account.

2. The learned counsel for the petitioner Sri.B.Krishna Mani, concedes that his client had earlier approached this Court by filing WP(C)No.29777/2019, but that he could not comply with the directions therein; and that consequently, the Bank has evicted him from two of the secured assets which are now intended to be put to auction soon. He, therefore, prays that Ext.P1 notice be set aside and the respondent-Bank be directed to permit his client to settle the loan liability, as afore prayed for.

3. In response, Sri.Leo George - learned Standing Counsel for the respondent-Bank, submitted that this Writ Petition is not maintainable since the petitioner had earlier approached this Court, but refused to comply with the directions therein. He contended vehemently that the present Writ Petition is an abuse of process and that the Bank is fully entitled to sell the property under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act ('the SARFAESI Act' for brevity). He added to his submissions by saying that if the petitioner is desirous of securing highest

amounts for the secured assets, he is at liberty to have his own nominees to participate in the auction, but that this cannot give him a right either vested or otherwise - to claim that he should be allowed to sell the property through a private sale. He, therefore, prayed that this Writ Petition be dismissed.

4. On hearing the learned Standing Counsel as afore, Sri.B.Krishna Mani submitted that his client has approached this Court with full sincerity and that he is desirous of settling the account at the earliest. He, therefore, prayed that his client be, at least, given an opportunity of approaching the Bank with a proper proposal, so that he can then arrange for buyers for the property, thus leading to the account being settled without further prejudice to him and other owners of the property.

5. In reply, Sri.Leo George submitted that though there is nothing standing in the way of the petitioner in approaching the Bank with a proper proposal, he has not chosen so until now but has approached this Court by urging untenable contentions. He, therefore, submitted that if the petitioner approaches the Bank with a proper proposal, the same will be considered in terms of law; however, prayed that this Court may not make any affirmative declarations in his favour at this stage.

Taking note of the afore submissions and since the jurisdiction of this Court in interfering with the steps taken by the Bank under the provisions of the SARFAESI Act is severely proscribed, going by the judgments 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], I order this writ petition to the limited extent of leaving liberty to the petitioner to approach the Bank with an appropriate representation; in which event, the same will be considered by the competent Authority, after affording him an opportunity of being heard.

After I dictated this part of the judgment, Sri.B.Krishna Mani submitted that his client may also be given liberty to seek that his brother be put back in possession of one of the secured assets, since it is his sole residential abode and further that the Bank be directed to consider this also, when his client makes the afore allowed representation.

Of course, this is a liberty that is available to the petitioner and if he chooses to make such a request, the Bank will certainly consider it as per law.

