(2023) 06 KL CK 0305

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12316 Of 2023

Sameer V. T.Vs State Bank Of India

Date of Decision : 20-06-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 17

Citation : (2023) 06 KL CK 0305

Hon'ble Judges : C. S. Dias, J

Bench : Single Bench

Advocate : E.A.Bijumon, Jithesh Menon, Tom K.Thomas

Final Decision : Dismissed

Judgement

C. S. Dias, J

1. The writ petition is filed to direct the respondents to permit the petitioner to be given an opportunity to close the loan account by giving maximum reductions.

2. The petitioner's case is that he was a guarantor to a loan that was availed by a company doing business in footwear. The petitioner's property was offered as collateral security. Due to the COVID-19 pandemic and other unforeseen circumstances, the principal borrower could not pay the instalments on time. The respondent has initiated proceedings against the secured asset under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (in short, 'Act'). The petitioner is prepared to pay the outstanding amount in equated monthly instalments. This Court by Ext P1 judgment dated 14.7.2022 permitted the petitioner to approach the Debt Recovery Tribunal through an application under Sec.17 of the Securitisation Act. Subsequently, by Ext P2 judgment, this Court permitted the petitioner to approach the Bank with a proposal under the One Time Settlement Scheme. The petitioner alleges that he deposited an amount of Rs.3,30,00,000/- before the respondent by availing the one time settlement scheme. But, the respondent again initiated coercive proceedings against him. Consequently, the petitioner again approached this

Court to consider his request for one time settlement scheme. But, this Court by Ext P4 judgment, closed the writ petition as infructuous in view of the fact that the Bank had rejected his proposal. Now, the Bank is surging ahead the recovery proceedings as against the petitioner. Hence, the petitioner is prepared to pay the outstanding amount in equated monthly instalments.

3. The respondent has filed a counter affidavit, inter alia, denying the allegations in the writ petition. The respondent has also contended that the writ petition is not maintainable in view of the law laid down by the Supreme Court. It is the case of the respondent that the proposal of the petitioner was placed before the High level Committee of the Bank for approval. The Bank considered the proposal and permitted the petitioner to pay an amount of Rs.3,70,00,000/-as against the total due of Rs.6,20,08,991/-. But, the petitioner failed to pay the amount made under the one time settlement scheme. Therefore, the respondent is not willing to show any further indulgence in favour of the petitioner . Hence the writ petition may be dismissed.

4. Heard; Sri.Bijumon E.A, the learned counsel appearing for the petitioner and Sri.Tom K.Thomas, the learned counsel appearing for the respondent.

5. The Hon'ble Supreme Court in South Indian Bank Ltd vs. Naveen Mathew Philip (2023 LiveLaw (SC) 320), after adverting to a myriad of earlier judicial pronouncements rendered under the Act, has categorically declared that High Courts shall not, unless in extraordinary circumstances, interfere with proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in writ proceedings under Article 226 of the Constitution of India.

6. The Hon'ble Supreme Court in State Bank of India vs. Arvindra Electronics Pvt Ltd [2022 KHC 7165] has held that it is not for the High Courts to enlarge the time period fixed by the Banks under the One Time Settlement Scheme.

7. Going by the counter affidavit filed by the respondent/Bank, it is seen that the petitioner's proposal to pay the outstanding amount under the One Time Settlement Scheme was accepted by the Bank by directing him to pay an amount of Rs.3,70,00,000/-. Indisputably, the petitioner has not availed the benefit of the scheme. Therefore, I am of the view that there is no extraordinary circumstance made out to entertain the writ petition by exercising the plenary powers of this Court under Article 226 of the Constitution of India.

Resultantly, the writ petition is dismissed without prejudice to the right of the petitioner to work out his remedies, in accordance with law.

