

(2024) 03 KL CK 0244
In the High Court Of Kerala
Case No : Writ Petition (C) No. 12196 Of 2024

Sanad P

APPELLANT

Vs

Kerala Bank

RESPONDENT

Date of Decision : 27-03-2024

Acts Referred:

Citation : (2024) 03 KL CK 0244

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Binoy Vasudevan, Rincy Khader, Sreejith Sreenath, M.Sasindran

Final Decision : Disposed Of

Judgement

N. Nagaresh, J

1. The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Kerala Bank to the petitioner, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
2. The Bank paid ₹ 33 lakhs to the petitioner as Mortgage Loan in the year 2023. The petitioner states that though the petitioner made remittances promptly during the initial repayment period of the financial advance, he could not pay the repayment instalments promptly later due to financial constraints. The repayment of loan fell into arrears. It happened due to reasons beyond the control of the petitioner.
3. Though the petitioner requested the Bank to permit the petitioner to repay the overdue amounts in easy monthly instalments, the Bank authorities were not yielding. The authorities, instead, started coercive proceedings, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002 and issued Ext.P2 notice.

4. The petitioner states that he is still in a position to clear the overdue amounts towards the loan, if sufficient time is given to clear the dues in easy monthly instalments. If the respondents are permitted to continue with the coercive proceedings and auction the secured assets provided by the petitioner, he will be put to untold hardship and loss.
5. Standing Counsel entered appearance on behalf of the Bank and denied all the statements made by the petitioner. On behalf of the respondents, it is submitted that the loan was given to the petitioner in the year 2023. The petitioner committed default in repaying the loan.
6. The Bank repeatedly reminded the petitioner and required him to clear the dues. The petitioner deliberately omitted to do so. In the circumstances, the Bank had no other go than to proceed against the petitioner invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The impugned Ext.P2 notice was issued in these circumstances. The petitioner has not advanced any legal reasons to thwart the coercive proceedings initiated by the Bank.
7. The Standing Counsel, however, submitted that if the petitioner is ready and willing to make a substantial payment soon and remit the balance overdue amount immediately thereafter, a short breathing time can be granted to the petitioner to clear the dues. The Standing Counsel submitted that the outstanding amount due to the Bank from the petitioner is ₹ 39,67,601/- and the overdue amount as on 27.03.2024 is ₹ 7,25,948/-.
8. I have heard the counsel for the petitioner and the Standing Counsel representing the Bank.
9. The specific case of the petitioner is that the petitioner has been making the repayment and maintaining the loan account initially. The default in repayment occurred lately due to reasons beyond the control of the petitioner. The petitioner has provided substantial security which will safeguard the interest of the Bank.
10. In the facts and circumstances of the case, I am inclined to dispose of the writ petition giving a short and reasonable time to the petitioner to clear off the liability.
11. The writ petition is therefore disposed of with the following directions:
 - (i) The petitioner shall remit an amount of ₹ 3 lakhs on or before 30.03.2024.
 - (ii) The petitioner shall remit the balance overdue amount in subsequent consecutive 10 equal monthly instalments thereafter, along with accruing interest and other Bank charges, if any.
 - (iii) If the petitioner commits default in making payments as directed above, the respondents will be at liberty to continue with coercive proceedings against the petitioner in accordance with law.

- (iv) The petitioner shall also pay current EMIs along with the aforesaid payments.
- (v) If the petitioner makes payments as directed above, coercive proceedings, if any, against the petitioner shall stand deferred.