
(2023) 06 KL CK 0217
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2232 Of 2023

Yunus Kutty

APPELLANT

Vs

Authorized Officer, Indian Overseas Bank

RESPONDENT

Date of Decision : 15-06-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2023) 06 KL CK 0217

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

Bench : Single Bench

Advocate : Binu George, Hemalatha, Sunil Shanker, Vidya Gangadharan, Sandhra.S

Final Decision : Dismissed

Judgement

C.S.Dias, J.

1. The writ petition is filed to quash the order passed on Ext.P5 representation submitted by the petitioner.
2. The petitioner had availed financial assistance from the 2nd respondent bank by creating an equitable mortgage. Due to unforeseen circumstances, he could not pay the installments in time. The bank has proceeded against the secured asset under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act'). By Ext.P4 judgment, this Court had directed the bank to consider the proposal submitted by the petitioner for a One time Settlement Scheme. Despite the direction, the respondents have rejected the proposal. The action of the respondents is illegal and arbitrary. Hence, the Writ Petition.
3. Heard; Sri. Binu George, the learned Counsel appearing for the petitioner and Sri.Sunil Sankar, the learned Counsel appearing for the respondents.
4. Sri.Sunil Sankar, on instructions, submitted that pursuant to the direction

passed by this Court the respondents have considered Ext.P5 representation and have rejected the same as it is not viable. Hence, the writ petition may be dismissed.

5. The Hon'ble Supreme Court in *State Bank of India vs. Arvindra Electronics (P) Ltd.* (AIR 2022 SC 5517), has categorically held that it is not for the High Court, in exercise of powers under Article 226 of the Constitution of India, to enlarge the time period or decide on the decisions of the Bank taken under the One Time Settlement Scheme.

6. Recently, the Hon'ble Supreme Court in *South Indian Bank Ltd vs. Naveen Mathew Philip* (2023 LiveLaw (SC) 320), after advertng to a myriad of earlier judicial pronouncements, has declared the law that, High Courts shall not, unless in extra ordinary 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.

7. Having considered the pleadings and materials on record and the law on the point, and further the fact that the bank has, already rejected Ext.P5 representation submitted by the petitioner, I do not find any extraordinary circumstances to entertain the writ petition by exercising the discretionary powers of this Court under Article 226 of the Constitution India. Nonetheless, it would be up to the petitioner to work out his statutory remedies in accordance with law.

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