

(2024) 02 KL CK 0210
High Court Of Kerala
Case No: Original Petition (DRT) No.79 Of 2024

Rajan. M.A.Vs
Authorized Officer
South Indian Bank

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 23, 2024

Acts Referred:

- Constitution of India, 1950 - Article 227
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 13(4), 14, 18

Hon'ble Judges: N.Nagaresh, J

Bench: Single Bench

Advocate: P.R.Milton, Mohan Jacob George

Final Decision: Dismissed

Judgement

N. Nagaresh, J.

1. The petitioner is the sole proprietor of a Hardware business and Managing Partner of M/s. Rajans Home Accessories. The petitioner states that

during the year 2018, the South Indian Bank sanctioned a sum of ₹400 lakhs as CCOL facility to the petitioner. The 2018 and 2019 floods and 2020

Covid-19 pandemic adversely affected the business of the petitioner and consequently the petitioner defaulted in repayment.

2. The respondents thereupon declared the loan account as NPA and issued Ext.P1 demand notice dated 08.07.2021 invoking the provisions of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. On 04.03.2022, Section 13(4) was invoked and

the symbolic possession of the properties was taken by the Bank on 05.10.2022. The petitioner approached this Court filing W.P.(C) No.30596/2021.

The respondents approached the Chief Judicial Magistrate's Court under Section 14. The Chief Judicial Magistrate appointed an Advocate

Commissioner who issued Ext.P2 notice dated 14.12.2022 to the petitioner.

3. The petitioner states that by selling properties, he has repaid ₹400 lakhs as against the demand of ₹4,27,02,538.64. The petitioner filed SA

No.68/2023 in the Debts Recovery Tribunal-II, Ernakulam. The petitioner would submit that without noting the repayment of ₹400 lakhs by the

petitioner, the Debts Recovery Tribunal dismissed the stay petition as per Ext.P3.

4. On 07.02.2024, the respondents attempted to take over possession of the petitioner's business unit without any notice. The petitioner therefore filed

IA No.668/2024 to amend the SA. The petitioner also filed IA No.669/2024 to stay the execution of the Chief Judicial Magistrate's order. The

petitioner states that without properly appreciating the facts of the case, the Debts Recovery Tribunal has dismissed the stay petition as per Ext.P3

order.

5. The counsel for the petitioner argued that the Tribunal failed to consider the substantial remittance of ₹400 lakhs by the petitioner against the

demand of 4,27,02,538.64 to the Bank. Ext.P3 is therefore liable to be set aside.

6. On 07.02.2024, the respondents tried to execute Ext.P6 order of the Chief Judicial Magistrate with the assistance of the Advocate Commissioner.

The petitioner therefore filed Exts.P4 and P5 petitions to advance the hearing of the case to 15.02.2024. But, the Tribunal advanced the case to

23.02.2024. Ext.P3 order is illegal and highly arbitrary, contended the petitioner.

7. Standing Counsel entered appearance and resisted the OP(DRT). The Standing Counsel submitted that in spite of repeated demands and requests,

the petitioner failed to repay the loan amount. The petitioner is urging untenable grounds in order to delay and defeat recovery proceedings initiated by

the Bank. It is true that the petitioner has repaid substantial amount subsequently. But, those payments were made after selling the pledged property.

The writ petition is therefore liable to be dismissed.

8. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondents.

9. The challenge in the OP(DRT) filed by the petitioner invoking Article 227 of the Constitution of India, is against Ext.P3 proceedings dated

24.11.2023 of the Debts Recovery Tribunal-II, Ernakulam in IA No.391/2023 in SA No.68/2023. IA No.391/2023 is an application praying to stay all

further proceedings pursuant to a notice issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate's Court, Thrissur. In his

application, the petitioner stated that he has deposited ₹35 lakhs in the loan account as undertook before this Court.

10. The Debts Recovery Tribunal noted that the Bank has produced necessary documents evidencing registration of security interest with the Central

Registry. The Bank has produced all the documents evidencing compliance of statutory requirements mandated under the SARFAESI Act. Due to

non-payment of public money, the Bank must have faced difficulty in circulating funds, resulting ultimate loss to the banking transactions. The Tribunal

held that the balance of convenience does not lie in favour of the petitioner. On these grounds, the Tribunal rejected the stay application as per Ext.P3

order.

11. I do not find any illegality or infirmity in Ext.P3 order of the Tribunal. According to the Standing Counsel for the respondents, in spite of payments

made by the petitioner, there is substantial outstanding still payable to the Bank. The petitioner has paid the debt after selling some of the mortgaged

properties. Such payment cannot be good and sufficient reason to extend leniency to the petitioner.

12. Furthermore, the challenge in the OP(DRT) is upon Ext.P3 order of the Debts Recovery Tribunal. The petitioner has an effective alternate

remedy of preferring appeal under Section 18 of the SARFAESI Act, 2002, to challenge Ext.P3 order. It cannot be said that Ext.P3 order of the

Debts Recovery Tribunal is perverse. It cannot be said that the Debts Recovery Tribunal has failed to exercise jurisdiction vested in it. It cannot also

be said that the Tribunal has exceeded its jurisdiction.

13. In the circumstances, I find no grounds to interfere in the matter under Article 227 of the Constitution of India.

The OP(DRT) is therefore dismissed.