

## Noorjahan Zakkir Hussain Vs People's Urban Co Operative Bank Limited

**Court:** High Court Of Kerala

**Date of Decision:** March 27, 2024

**Hon'ble Judges:** N. Nagaresh, J

**Bench:** Single Bench

**Advocate:** Varghese K.Paul, Sneha Divakaran P., Kashmeera Ashraf, Anamika Sasikumar, Devaprasanth P.J, Smini Jose

**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 People's Urban Co-

operative 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 â,125 lakhs to the petitioner as Mortgage Loan and â,140 lakhs as Over Draft facility in the years 2019 and 2021 respectively. The

petitioner states that though the petitioner made remittances promptly during the initial repayment period of the financial advance, she could not pay

the repayment instalments promptly later. The repayment of loan fell into arrears later. 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 Exts.P4, P5, P6 and P7

notices.

4. The petitioner states that she 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, she 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/advance were given to the petitioner in the years 2019 and 2021 respectively. The petitioner committed default in repaying the

loan / maintaining the credit facility.

6. The Bank repeatedly reminded the petitioner and required her 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 Exts.P4, P5, P6 and P7 notices were 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

outstanding / 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 towards Over Draft facility due to the Bank from the petitioner as on 27.03.2024 is ₹1,47,52,506/-, outstanding

amount towards Mortgage Loan is ₹1,21,22,186/- and the overdue amount towards Mortgage Loan is ₹14,72,668/-

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 of the account 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 ₹13 lakhs before 11 am on 30.03.2024.

(ii) The petitioner shall remit the balance outstanding amount in the Over Draft account and the balance overdue amount in the Mortgage Loan account in

subsequent consecutive 12 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 towards the Mortgage Loan along with the aforesaid payments.

(v) If the petitioner pays the amount as directed above, any coercive proceedings against the petitioner will stand deferred.