

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 1ST DAY OF APRIL 2024 / 12TH CHAITHRA, 1946

WP(C) NO. 8531 OF 2024

PETITIONERS:

- 1 BOSE NARAYAN
AGED 70 YEARS
RESIDING AT UTHRADAM NIVAS,
KALLUMPURAM, SIVASAKTHI NAGAR-14,
SAKTHIKULANGARA CHERRY,
KOLLAM, PIN - 691581.
- 2 SOORYAKALA
AGED 65 YEARS, W/O. BOSE NARAYAN,
RESIDING AT UTHRADAM NIVAS,
KALLUMPURAM, SIVASAKTHI NAGAR-14,
SAKTHIKULANGARA CHERRY,
KOLLAM, PIN - 691581.

BY ADVS.
K.VIJAYAN
S.NAVAS
NAMITHA RAJESH
MALVIKA S KUMAR
SHEENAMOL VARGHESE

RESPONDENTS:

- 1 THE MANAGER
AGED 65 YEARS
THE COASTAL URBAN CO-OPERATIVE BANK LTD
NO. 3035, NEAR CIVIL STATION,
SAKTHIKULANGARA BRANCH, SAKTHIKULANGARA,
KOLLAM, PIN - 691581.
- 2 THE AUTHORIZED OFFICER
THE COASTAL URBAN CO-OPERATIVE BANK LTD
NO. 3035, NEAR CIVIL STATION,
KOLLAM, PIN - 691013.

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BY ADVS.
AKHIL K.MADHAV
ANESH PAUL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 01.04.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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J U D G M E N T

Dated this the 1st day of April, 2024

The petitioners have approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Coastal Urban Co-operative Bank to the petitioners, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid ₹9.75 lakhs to the petitioners as Ordinary Loan in the year 2021. The petitioners state that though the petitioners made remittances promptly during the initial repayment period of the financial advance, they could not pay the repayment instalments promptly later due to

Covid-19 pandemic. The repayment of loan fell into arrears. It happened due to reasons beyond the control of the petitioners.

3. Though the petitioners requested the Bank to permit the petitioners 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.P1 notice.

4. The petitioners state that they are 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 petitioners, they 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 petitioners. On behalf of the respondents, it is submitted that the loan was given to the petitioners in the year 2021. The petitioners committed default in repaying the loan.

6. The Bank repeatedly reminded the petitioners and required them to clear the dues. The petitioners deliberately omitted to do so. In the circumstances, the Bank had no other go than to proceed against the petitioners invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The impugned Ext.P1 notice was issued in these circumstances. The petitioners have not advanced any legal reasons to thwart the coercive

proceedings initiated by the Bank.

7. The Standing Counsel, however, submitted that if the petitioners are 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 petitioners to clear the dues. The Standing Counsel submitted that the outstanding amount due to the Bank from the petitioners is ₹12,63,072/- and the overdue amount as on 01.04.2024 is ₹5,31,840/-.

8. I have heard the counsel for the petitioners and the Standing Counsel representing the Bank.

9. The specific case of the petitioners is that the petitioners have been making the repayment and maintaining the loan account initially. The default in repayment occurred lately due to reasons beyond the control of the petitioners. The petitioners have 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 petitioners to clear off the liability.

11. The writ petition is therefore disposed of with the following directions:

(i) The petitioners shall remit the overdue amount of ₹5,31,840/- in 10 equal and consecutive monthly instalments along with accruing interest and other Bank charges, if any. The first instalment shall be paid on or before 01.05.2024.

(ii) If the petitioners commit default in making payments as directed above, the

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respondents will be at liberty to continue with coercive proceedings against the petitioners in accordance with law.

(iii) The petitioners shall also pay current EMIs along with the aforesaid payments.

(iv) If the petitioners make payments as directed above, coercive proceedings, if any, against the petitioners shall stand deferred.

Sd/-
N. NAGARESH
JUDGE

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APPENDIX OF WP(C) 8531/2024

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE ADVOCATE COMMISSIONER'S NOTICE DATED 20.01.2024 ISSUED BY THE ADVOCATE COMMISSIONER IN M.C 611/2023 OF THE HON'BLE CJM COURT KOLLAM
Exhibit P2	THE TRUE COPY OF THE REPRESENTATION DATED 15.02.2024 SUBMITTED BEFORE THE FIRST RESPONDENT