

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 29<sup>TH</sup> DAY OF JANUARY 2024 / 9TH MAGHA, 1945

WP(C) NO. 40861 OF 2023

**PETITIONER:**

LAILA BEEVI M  
AGED 63 YEARS  
W/O SIRAJUDEEN KASIM, AGED YEARS,  
VALAYIL, KANNAMPALLI BHAGAM,  
KAYAMKULAM KERALA., PIN - 690502

BY ADVS.  
THASNIMOL T.S.  
SHIJI P.S.

**RESPONDENT:**

THE UNION BANK OF INDIA  
UNION MSME FIRST BRANCH, AJAY VIHAR, M.G ROAD,  
ERNAKULAM DISTRICT. REPRESENTED BY,  
AUTHORIZED OFFICER., PIN - 682016

SRI.ASP KURUP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 29.01.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

## **JUDGMENT**

Dated this the 29<sup>th</sup> day of January, 2024

The petitioner has approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the Union Bank of India to the petitioner's son, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The Bank paid ₹92.50 lakhs towards Over Draft facility in the year 2019, ₹18.50 lakhs towards UGECIL in the year 2020 and ₹3.60 lakhs towards Credit Card facility to the petitioner's son. The petitioner is the guarantor to the loans availed by her son. The petitioner states that though the petitioner and her son made remittances promptly during the initial repayment period of the financial advance, they could not pay the repayment instalments promptly later due to health issues and ailments. The repayment of loan / advance

fell into arrears later. It happened due to reasons beyond the control of the petitioner and her son.

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.P2, P3 and P5 notices.

4. The petitioner states that she is still in a position to clear the overdue amounts towards the loans, if sufficient time is given to clear the dues in easy monthly instalments. If the respondent is 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 respondent, it is submitted that the loan / advance was given to the petitioner's son in the year 2019 and 2020. The petitioner committed default in repaying the loan / maintaining the advance / credit facility.

6. The Bank repeatedly reminded the petitioner and her son and required them to clear the dues. They deliberately omitted to do so. OA filed by the respondent is pending before the Debts Recovery Tribunal. 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.P2, P3 and P5 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 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's son as on 31.10.2023 is ₹86,17,181/-.

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 accounts initially. The default in repayment of the loans occurred lately due to reasons beyond the control of the petitioner and her son. 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 the outstanding amount of ₹86,17,181/- in 12 consecutive and equal monthly instalments along with accruing interest and other Bank charges, if any. First of such instalments shall be paid on or before 29.02.2024.

(ii) If the petitioner commits single default in making payments as directed above, the respondent will be at liberty to continue with the coercive proceedings against the petitioner in accordance with law.

(iii) If the petitioner makes payments as directed above, coercive proceedings, if any, against the petitioner shall stand deferred.

**Sd/-**  
**N.NAGARESH**  
**JUDGE**

spk

**APPENDIX OF WP(C) 40861/2023**

**PETITIONER EXHIBITS**

|                   |                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>Exhibit P1</b> | <b>TRUE COPY OF THE DEMAND NOTICE DATED 20.06.2023. ISSUED BY THE RESPONDENT BANK</b>                                          |
| <b>Exhibit P2</b> | <b>THE TRUE COPY OF THE POSSESSION NOTICE DATED 03.11.2023 ISSUED BY THE RESPONDENT BANK</b>                                   |
| <b>Exhibit P3</b> | <b>TRUE COPY OF THE SALE NOTICE DATED 13.11.2023 ISSUED BY THE RESPONDENT</b>                                                  |
| <b>Exhibit P4</b> | <b>TRUE COPY OF THE MEDICAL CERTIFICATE DATED 11.10.2023 ISSUED BY THE ST. GEORGE MEDICAL MISSION HOSPITAL, PATHANAMTHITTA</b> |
| <b>Exhibit P5</b> | <b>TRUE COPY OF THE NOTICE ISSUED FROM THE ADVOCATE COMMISSIONER DATED 23/12/2023</b>                                          |