

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 16<sup>TH</sup> DAY OF JANUARY 2024 / 26TH POUSHA, 1945

WP(C) NO. 42990 OF 2023

PETITIONER:

JOY KURIAKOSE  
AGED 65 YEARS, S/O KURIAKOSE,  
KARIMKUTTIPPURAM HOUSE, CHURCH ROAD,  
PETTA METRO STATION ,CHAMPAKARA,  
POONITHURA,ERNAKULAM,  
KERALA., PIN - 682038.

BY ADVS.  
M.R.SASITH  
ANJANA SURESH.E  
R.K.CHIRUTHA  
NEELANJANA NAIR

RESPONDENT:

THE AUTHORIZED OFFICER  
CANARA BANK, A M ROAD ,  
KOZHIPPILLY , KOTHAMANGALAM,  
ERNAKULAM., PIN - 686691.

BY ADVS.  
GOPIKRISHNAN NAMBIAR M  
K.JOHN MATHAI  
JOSON MANAVALAN  
KURYAN THOMAS  
PAULOSE C. ABRAHAM  
RAJA KANNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 16.01.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## **J U D G M E N T**

Dated this the 16<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 Canara 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 ₹18 lakhs to the petitioner as Overdraft in the year 2022. The petitioner states that though the petitioner made remittances promptly during the initial repayment period of the financial advance, he could not pay the repayment instalments promptly later due to financial constraints. The repayment of loan fell into arrears. 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 Ext.P1 notice invoking Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 .

4. The petitioner states that he 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 respondent is permitted to continue with the coercive proceedings and auction the secured assets provided by the petitioner, he 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 was given to the petitioner in the year 2022. The petitioner committed default in repaying the loan.

6. The Bank repeatedly reminded the petitioner and required him 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 Ext.P1 notice was 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 as on 16.01.2024 is ₹20,94,502/-.

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 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 the outstanding amount of ₹20,94,502/- in eight equal and consecutive monthly instalments along with accruing interest and other Bank charges, if any. The first instalment shall be paid on or before 16.02.2024.

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(ii) 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.

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

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

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APPENDIX OF WP (C) 42990/2023

PETITIONER EXHIBITS

|            |  |
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| Exhibit P1 | TRUE COPY OF POSSESSION NOTICE DATED<br>15/11/2023 |
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