IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946

WP(C) NO. 2340 OF 2024

PETITIONERS:

1 M/S KERALA REMEDIES,
A PARTNERSHIP FIRM HAVING ADDRESS AT DOOR NO.20/418, 418-1,
NEAR ZEENATH THEATRE, ALUVA P.O.,
ALUVA WEST VILLAGE, ALUVA TALUK,
ERNAKULAM,
REP. BY ITS MANAGING PARTNER AND CHIEF EXECUTIVE OFFICER,
BOBY KIZHAKKETHARA,
S/O LATE BABU, PIN - 683101

2 BOBY KIZHAKKETHARA,
AGED 48 YEARS,
S/O LATE BABU,
KIZHAKKETHARA HOUSE, 7 B,
LINK HERITAGE, CHITTOOR ROAD,
ERNAKULAM, KOCHI, PIN – 682018

BY ADVS.
VARGHESE C.KURIAKOSE
AMRITHA.J
KURUVILLA MATHEW
VIPIN C. VARGHESE

RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF BANKING OPERATIONS,
MINISTRY OF FINANCE,
NEW DELHI, PIN - 110001

2 THE DCB BANK LIMITED,
ERNAKULAM BRANCH,
ST.FRANCIS ASSISI HALL,
67/6249A, NEAR MARINE DRIVE ERNAKULAM,
KOCHI REPRESENTED BY BRANCH MANAGER,
PIN - 682031

3 AUTHORISED OFFICER,
DCB BANK LTD. RETAIL ASSET COLLECTIONS,
1ST FLOOR, NO.6, RAJAJI ROAD,
NUNGAMBAKKAM, LAND MARK,
OPP TO TENNIS STADIUM,
CHENNAI, PIN - 600034

BY ADVS.
B.S.SURESH KUMAR
ASHLEY JOHN(K/000719/2015)
RANJANA V.(K/001646/2000)
ANUSREE C.S.(K/1438/2021)
T.C.KRISHNA, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 2nd day of April, 2024

The petitioners have approached this Court aggrieved by the coercive proceedings for recovery of financial advance made by the DCB 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 ₹58 lakhs to the petitioners as Business Loan in the year 2019. 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 flood and Covid-19 pandemic. The repayment of loan fell into arrears later. 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 Exts.P1 and P3 notices.

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 2019. 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 Exts.P1 and P3 notices were 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 as on 02.04.2024 is ₹80,80,137/-

and the overdue amount as on 02.04.2024 is ₹8,31,393/-.

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 of the account 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 an amount of ₹1 lakh on or before 12.04.2024.

(ii) The petitioners shall remit the balance overdue amount in subsequent consecutive seven equal monthly instalments thereafter, along with accruing interest and other Bank charges, if any.

(iii) If the petitioners remit ₹1 lakh as directed above, sale shall stand deferred.

(iv) If the petitioners commit default in making payments as directed above, the respondents will be at liberty to continue with coercive proceedings against the petitioners in accordance with law.

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

(vi) If the petitioners pay the amount as directed above, any coercive proceedings against the petitioners will stand deferred.

Sd/-

N. NAGARESH

JUDGE

SR

APPENDIX OF WP(C) 2340/2024

PETITIONER'S EXHIBITS:

Exhibit P1	**TRUE PHOTOSTAT COPY OF THE SECTION 13 (2) NOTICE ISSUED BY THE 2ND RESPONDENT DATED 26.10.2023**
Exhibit P2	**TRUE PHOTOSTAT COPY OF THE OBJECTIONS DATED 07.11.2023 SUBMITTED BY THE PETITIONERS TO THE 2ND RESPONDENT**
Exhibit P3	**TRUE PHOTOSTAT COPY OF THE POSSESSION NOTICE DATED 09.01.2024 ISSUED BY THE 2ND RESPONDENT**
Exhibit P4	**TRUE PHOTOSTAT COPY OF THE REQUEST DATED 12.01.2024 SUBMITTED BY THE PETITIONERS TO THE 2ND RESPONDENT**
Exhibit P5	**TRUE COPY OF THE E- AUCTION SALE NOTICE DATED 28.02.2024 ISSUED BY THE 2 ND RESPONDENT BANK.**