IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 11TH DAY OF APRIL 2024 / 22ND CHAITHRA, 1946

WP(C) NO. 11797 OF 2018

PETITIONER/S:

JASMIN K.
AGED 56 YEARS
ARACKAKUNNEL, KODIMATHA, KOTTAYAM-686013.
BY ADV SRI.T.M.ABDUL LATHEEF

RESPONDENT/S:

1 STATE BANK OF INDIA
RACPC, 3RD FLOOR, OPP.BCM COLLEGE, K.K ROAD, KOTTAYAM-686001, REPRESENTED BY THE ASSISTANT GENERAL MANAGER.

2 THE ASSISTANT GENERAL MANAGER
STATE BANK OF INDIA, RACPC, 3RD FLOOR,OPP. BCM COLLEGE, K.K ROAD, KOTTAYAM-686001.

3 THE AUTHORIZED OFFICER
STATE BANK OF INDIA, RACPC, 3RD FLOOR, OPP. BCM COLLEGE, K.K ROAD, KOTTAYAM-686001.

BY ADVS.
SRI.T.SETHUMADHAVAN (SR.)
DEEPA NARAYANAN
SRI. JAYESH MOHAN KUMAR, SC, STATE BANK OF TRAVANCORE

OTHER PRESENT:

SRI.T,SETHUMADHAVAN, SENIOR ADVOCATE FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05.04.2024, THE COURT ON 11.04.2024 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

A riveting question has emerged in this writ petition. Whether the Secured Creditor is entitled to continue with the measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 once a civil suit filed by it for recovery is dismissed by the court?

2. The facts in the writ petition disclose that petitioner availed a car loan for an amount of Rs.9,00,000/-. The petitioner executed necessary documents towards security. As per Ext.P6, the terms and conditions of sanction of the loan was accepted by the petitioner. Thereafter, by Ext.P7 an agreement of hypothecation was also executed on 14.7.2010. The petitioner claims that she has paid the entire amount due under the loan account. But, Ext.P9 notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

("Securitisation Act", for short) was issued for an amount of Rs.1,73,138/-. The petitioner raised her objection and while so, the respondent-Bank again issued a fresh notice on 11.1.2008 under Section 13(2) of the Securitisation Act. The petitioner's objection that she is not liable to pay any amount under the loan agreement was not accepted by the respondent-Bank.

3. On behalf of the respondent-Bank, a statement has been filed in the writ petition wherein it is stated that Ext.P14 reply was considered and Ext.P15 was issued by the Bank rejecting the contentions. It is also contended that as against the measures under the Securitisation Act, the petitioner has got a remedy before the Debt Recovery Tribunal in terms of Section 17 of the Securitisation Act.

4. When the writ petition was taken up for hearing, the learned counsel for the petitioner submitted that the Bank during the pendency of the writ petition had filed commercial suit No.418/2021 before the Commercial Court, Kottayam. However, by judgment and decree dated 29.11.2023,

the suit was dismissed finding that there is no amount due to be recovered from the defendant therein, who is the petitioner herein.

5. In the light of the dismissal of the suit filed by the respondent Bank, the learned counsel for the petitioner submitted that the respondent Bank cannot proceed further with the recovery measures under the Securitisation Act and accordingly prayed that this Court may pass appropriate orders on the writ petition taking note of the subsequent events.

6. On the contrary, the learned Senior Counsel Sri.T.Sethumadavan appearing for the respondent Bank submitted that the measures under the Securitisation Act and filing of the civil suit being entirely different and whereas the secured creditor is entitled to take parallel proceedings for recovery of its dues, there cannot be any interdiction on the measures under the Securitisation Act. It is the specific case of the Bank that the writ petition under Article 226 of the Constitution of India is not maintainable against the measures taken by the Bank under the

Securitisation Act. Therefore, the learned Senior Counsel submitted that despite the dismissal of the suit, the bank is entitled to proceed with the measures now initiated.

7. I have heard Sri.Abdul Lathiff, learned counsel for the petitioner, and Sri.T.Sethumadhavan, learned Senior Counsel appearing for the respondent Bank assisted by Smt.Deepa Narayanan.

8. In the light of the specific argument raised by the learned Senior Counsel for the Bank, this Court is called upon to decide the following issues:-

(1) Whether the writ petition is maintainable against the measures under the Securitisation Act?

(2) Whether the Securitisation measures now initiated can be proceeded, despite the dismissal of the suit by the Commercial Court, Kottayam?

9. The question, as to whether the writ petition under Article 226 of the Constitution of India is maintainable against the measures taken

under the Securitisation Act, is no longer ***res integra***. It has already been decided by the Hon'ble Supreme Court in **Authorized Officer, State Bank of Travancore** v. **Mathew K.C. [2018 (1) KHC 786]** that the High Court under Article 226 of the Constitution of India can entertain a writ petition only under exceptional circumstances and that it is a self-imposed restraint by the High Court. The Apex Court while deciding the above case referred to the decision of the Hon'ble Supreme Court in **CIT v. Chhabil Das Agarwal [(2014) 6 SCC 603],** wherein four exceptional circumstances were carved out in paragraph No.15 of the said judgment, which is extracted for reference:

> "15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High

> Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

10. This position was reiterated by the Supreme Court of India in **South Indian Bank Ltd.** v. **Naveen Mathew Philip [2023 (4) KLT 29]**.

11. In the light of the principles laid down by the Hon'ble Supreme Court, this Court is of the considered view that normally a writ petition will not lie against the measures under the Securitisation Act, unless exceptional circumstances are made out in the writ petition.

12. Now the question before this Court is whether exceptional circumstances are made out for entertaining this writ petition. This Court is called upon to decide this issue, especially since the bank contends that it is entitled to continue the measures under the Securitisation Act, 2002, notwithstanding the dismissal of the suit.

13. Whether there exits exceptional circumstances as laid down by the Supreme Court in **Chabbil Das** (*supra*) would certainly depend on analyzing the facts of each case and see whether it fits into the four exceptions carved out by the Apex Court in paragraph No.15 of the decision in **Chabbil Das** (*supra*). While deciding whether the facts of this case fall within the exceptions as stated above, it would incidentally give answer to the second question raised before this Court.

14. To answer the contention put forth by the learned Senior Counsel that the Bank is entitled to proceed with the measures notwithstanding the dismissal of the civil suit, one needs to closely look into the definition of the word “debt” as defined under the statute. It is apposite to extract the definition of “debt” under Section 2(ha) of the Securitisation Act, which reads thus:

> **“(ha) “debt” shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts and Bankruptcy Act (51 of 1993) and includes– (i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract; (ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such**

> intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;"

Though the Securitisation Act does not define debt, the Parliament has adopted the definition of "debt" as defined under Section 2(g) of the Recovery of Debs and Bankruptcy Act, 1993.

15. Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993 defines the word "debt", which is extracted as below:

> "2(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank of a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on the date of the application;"

16. A reading of Section 2(g) shows that the "debt" means liability inclusive of interest claimed as dues from any person by the Bank, which is payable under a decree or order of any civil

court or an arbitration award or otherwise or under a mortgage subsisted on and legally recoverable as on the date of application. (emphasis supplied by the Court).

17. In the present case, it was purely the creditors wisdom to approach the civil court by filing the suit. Unfortunately, it ended with a dismissal, finding that there is no liability on the part of the borrower. But, still the learned Senior Counsel for the Bank submits that since the initiation of measures under the Securitisation Act and filing of civil suit is permissible, the dismissal of the suit would not have a bearing on the outcome of the measures under the Securitisation Act. The learned Senior Counsel further pressed home his point based on the Division Bench judgment of this Court in **Abdul Azeez v. Punjab National Bank [2005 (1) KLT 243]** that merely because the Bank has invoked the civil remedy for recovery of its dues, that will not enable the borrower to contend that the measures under Section 13(2) of the Securitisation Act must be dropped. In other words, according to the

learned Single Judge, the civil suit and measures under the Securitisation Act being independent can be pursued notwithstanding the dismissal of the suit.

18. No one can dispute the above proposition raised by the learned Senior Counsel. In fact, the court is in full agreement with the proposition raised by the learned Senior Counsel for the respondent Bank. It may be incidentally noted that in **Transcore** Vs **Union of India [2008(1) SCC 125]**, the Apex Court has held that the Securitisation Act is supplemental to the Recovery of Debts Due to Banks and Financial Institution Act, 1993. Applying the aforesaid principles, it may be possible to conclude that filing of civil suit is supplement to the right under Section 13(2) of the Securitisation Act. But, the question before this Court is once a civil remedy is invoked and the civil court has found that there is no debt to be recovered by the creditor against the borrower, can the creditor proceed under the Securitisation Act independently *de hors* the dismissal of the suit.

19. As explained above, the Parliament has chosen consciously to define the word “debt” as **one legally recoverable.** Can it be said that despite the dismissal of the suit, C.S. No 418 of 2021, filed by the Bank, there exist a “debt” which is legally recoverable one. The answer to be given must be in negative against the respondent Bank and in the affirmative in favour of the petitioner.

20. The reasoning of this Court is based upon the well-defined basic principles governing the interpretation of statute. When the plain and ordinary meaning is given to the definition of “debt” under Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993, it leaves no doubt on one’s mind that it includes the amount so ordered by any civil court and should be legally recoverable one.

21. Viewed in another perspective, the court must necessarily hold that the stand taken by the respondent Bank is not only irrational but contrary to the statue. It clearly depicts the mind of a creditor, where it does not want to

respect the judgment of the civil court on the finding that no amount is liable to be recovered from the petitioner must be respected by the parties and proceed under the Securitisation Act which cannot be acceded to.

22. The reasoning of this Court is perhaps strengthened by the indisputable fact that issuance of demand notice under Section 13(2) is based on the original contract between the parties and further that the same contract was subjected to adjudication by the civil court and once an adjudication by the civil court has taken place ending in dismissal of the suit finding that there is no debt due from her, necessarily, it has to be held that the secured creditor is disentitled from proceeding further with measures under the Securitisation Act, since there is no legally recoverable debt.

23. In **Kanhaiya Lal** vs **State Bank of India [2008 KHC 8059]** the Patna High Court had an occasion to consider a similar issue, wherein the Court considered the action of State Bank of India in moving the certificate court under the Public

Demand Recovery Act against an insurance claim. The borrower was required to pay the certificate amount and the insurance claim. The bank did not challenge the said order. Later the bank filed a review petition which was dismissed and against the dismissal of the review petition appeal was filed. In the meantime, when measures under the Securitisation Act was initiated, the borrower approached the High court which interdicted the action of the bank.

24. In **M/s.Ace Media Advertisors Pvt. Ltd. & Others v. Bank of Baroda & Others [2009 KHC 6346],** a Division Bench of the Allahabad High Court considered the issue as to whether the secured creditor is entitled to initiate measures under the Securitisation Act for the amount recoverable by the Original Contract despite the Debt Recovery Tribunal determining the debt due. Answering the question in negative, the Bench of the Allahabad High Court held that the secured creditor can initiate measures only for the amount determined by the Debt Recovery Tribunal.

25. The Hon'ble Supreme Court of India in **A.P**

State Financial Corporation v. M/s.Gar Re-rolling Mills and Another [1994 KHC 790] considered the right of a financial institution under the State Financial Institutions Act to move under Section 29, despite suffering an order under Section 31.

26. When the decision of the Apex Court in **A.P. Financial Corporation** (*supra*) is carefully scrutinized, one can find similarity to the question raised in the writ petition. The question before the Hon'ble Supreme Court was that when the claim of the State Financial Corporation was negatived under Section 31 of the State Financial Corporations Act by a competent court, can the Financial Corporation rely on Section 29 and take further proceedings in this regard. Section 31 of the State Financial Corporations Act enables the Financial Corporation to apply before the District Judge seeking for an order of sale of the property pledged, mortgaged or hypothecated to them. After analyzing the various provisions under the State Financial Corporations Act, the Hon'ble Supreme Court found in paragraph No.13 as follows:

"13.On a conjoint reading of Sections 29 and 31 of the Act, it appears to us that in case of default in repayment of loan or any instalment or any advance or breach of an agreement, the Corporation has two remedies available to it against the defaulting industrial concern, one under Section 29 and another under Section 31 of the Act. The choice for availing the remedy under Section 29 or Section 31 of the Act is that of the Financial Corporation alone and the defaulting concern has no say whatsoever in the matter, as to which remedy should be taken recourse to by the Corporation against it for effecting the recovery. The expression "without prejudice to the provisions of Section 29 of this Act" as appearing in Section 31 of the Act clearly demonstrates that the Legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and save its rights and remedies under Section 29 of the Act to be availed at a later stage, with the sole object of enabling the Corporation to recover its dues. It is not, however, obligatory on the part of the Financial Corporation to invoke the special provisions of Section

> 31 of the Act, it can even without taking recourse to the provisions of the said section invoke the procedure prescribed under Section 29 of the Act for realisation of its dues. Where the Corporation takes recourse to the provisions of Section 31 of the Act and obtains an order from the court, it shall ordinarily and invariably seek its enforcement in the manner provided by Section 32 of the Act, which provisions are aimed to act in aid of the orders obtained under Section 31 of the Act and it cannot simultaneously initiate and take recourse to the remedy available to it under Section 29 of the Act unless it gives up, abandons or withdraws the proceedings under Section 31 of the Act, at whatever stage those proceedings may be. The Corporation cannot simultaneously pursue two remedies at the same time. The reach and scope of the two remedies is essentially different even if somewhat similar result flows by taking recourse to either of the two provisions in certain respects."

The Apex Court further held in paragraph No.19 as follows:

> "19.The right vested in the Corporation under Section 29 of the Act is besides the right already possessed at common law to institute a suit or the right

> available to it under Section 31 of the Act. Since, the Corporation can withdraw from the court its proceedings under Section 31 of the Act at any stage, it would imply that it has the right to withdraw from further proceedings under Sections 31 and 32 of the Act even after obtaining an order in its favour and take recourse to the proceedings under Section 29 of the Act without pursuing the proceedings under Section 31 of the Act any further. The Corporation cannot, indeed, execute the order under Section 31 of the Act and yet simultaneously take recourse to proceedings under Section 29 of the Act for the same relief. **The position may also be different if the claim of the Corporation is negatived, on facts, by the Court in the proceedings under Section 31 of the Act.** In that event depending upon the facts of each case, it may be permissible to hold that fair play and justice demand that the Corporation is not allowed to take recourse to the provisions of Section 29 of the Act. Thus from the above discussion it follows that the answer to the question posed in the opening part of the judgment is in the affirmative."

27. The Apex Court further proceeded to hold that Corporation cannot indeed execute an order under Section 31 of the State Financial

Corporations Act and yet simultaneously take recourse to proceedings under Section 29 of State Financial Corporations Act for the same relief. The position may be also different if the claim of the Corporation is negatived, on facts, by the Court in a proceedings under Section 31. In that event, depending upon the facts of each case, it may be permissible to hold that fair play and justice demand that the Corporation is not allowed to take recourse to the provisions under Section 29 of the Act.

28. This Court is guided by the principles laid down by the Hon'ble Supreme Court in **A.P State Financial Corporation** (*supra*). Applying the principles, this Court indeed finds that the view taken by it as above is supported by precedents and guided by the well-defined principles governing interpretation of statues.

29. Law being as declared above; this Court must now answer another objection raised by the learned Senior Counsel for the Bank that the writ petition is not maintainable and the petitioner must be relegated to the Debt Recovery Tribunal.

As observed earlier, once it is held that on dismissal of the suit finding that the borrower is not liable for any amount as claimed by the secured creditor, should this Court relegate the petitioner to Debt Recovery Tribunal?

30. It may be noticed that secured creditor had no compulsion to institute the suit. However, it chose to proceed with the same and invited an adverse order. Alternatively, it was open to it to have independently prosecute its claim under the Securitisation Act, which it did not chose to do so and in such event, this Court would have necessarily relegated the petitioner to an adjudicatory mechanism under Section 17 of the Securitisation Act.

31. Despite having invited an adverse order from the civil court, when the secured creditor insists that it can continue the measure under the Securitisation Act, this Court necessarily must see whether the same is permissible under law. On such an exercise, this Court since has found that the secured creditor is not entitled to proceed with the measures now initiated, necessarily such

act must be construed as without jurisdiction and therefore the action complained will come within the purview of the exceptions carved out by the Apex Court in **Chabbil Das** (*supra*)**.** Therefore, it becomes imperative for this Court to hold that since the measures now initiated and continued are without jurisdiction, the petitioner need not be relegated to the alternative remedy before the Debt Recovery Tribunal under Section 17 of the Securitisation Act. Hence, this Court is inclined to exercise its discretionary jurisdiction vested in it under Article 226 of the Constitution of India.

32. It is further to be noted that the writ petition was filed on 3.4.2018 and by order dated 12.4.2018, the learned Standing Counsel for the Bank has undertaken before this Court that the vehicle will not be taken possession pending disposal of the writ petition. It was open for the Bank to have moved this court for either vacating the interim order or have the writ petition disposed of at an earlier stage. This was however not done. The filing of the suit during the

pendency of the writ petition also cannot be faulted with. But, once the civil suit is dismissed and when the writ petition is taken up for final hearing, the Bank cannot be heard to say that the writ petition is not maintainable and the writ petitioner has to be relegated to the alternative remedy. This Court is not impressed by the said stand of the Bank and can view it certainly as unreasonable. Hence, on facts, this Court hold that it will be highly discriminatory to relegate the petitioner to agitate the cause before the Debt Recovery Tribunal, especially when the civil suit is dismissed by the Commercial Court, Kottayam on 29.11.2023. It must be presumed that secured creditor was aware of the consequences of filing of the suit.

33. In the result, the writ petition is allowed. It is declared that the Bank cannot proceed with the measures under the Securitisation Act in the light of the dismissal of C.S.No.418/2021 dated 29.11.2023. At this point of time, the learned Senior Counsel for the Bank submits that the Bank had challenged the above

dismissal of the suit in the appellate court. This Court takes note of the fact that since an appeal has already been filed it is only appropriate that it should reserve the liberty of the Bank to proceed with the measures under Section 13(2) of the Securitisation Act on successful reversal of the judgment and decree in C.S.No 418 of 2021 on the files of Commercial Court, Kottayam by the appellate court.

The writ petition is ordered accordingly. No orders as to the costs.

Sd/-
EASWARAN S.
JUDGE

jg

APPENDIX OF WP(C) 11797/2018

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE LETTER NO.RASMECCC/396/10-11 DATED 31/07/2010 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
EXHIBIT P2	**TRUE COPY OF THE LETTER DATED 31.08.2017 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.**
EXHIBIT P3	**TRUE COPY OF THE POSTAL REGISTRATION SLIP.**
EXHIBIT P4	**TRUE COPY OF THE LETTER DATED 05.09.2017 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
EXHIBIT P5	**TRUE COPY OF THE LETTER DATED 17-11-2017 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
EXHIBIT P6	**TRUE COPY OF THE DOCUMENT DATED 12-06-2010.**
EXHIBIT P7	**TRUE COPY OF THE LOAN-CUM-HYPOTHECATION AGREEMENT.**
EXHIBIT P8	**TRUE COPY OF THE STATEMENT ISSUED BY THE BANK.**
EXHIBIT P9	**TRUE COPY OF THE NOTICE DATED 03-11-2017.**
EXHIBIT P10	**TRUE COPY OF THE REPLY DATED 07-12-2017 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.**
EXHIBIT P11	**TRUE COPY OF THE LETTER DATED 10-01-2018 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.**
EXHIBIT P12	**TRUE COPY OF THE LETTER DATED 11-01-2018 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
EXHIBIT P13	**TRUE COPY OF THE REPLY DATED 11-01-2018 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**
EXHIBIT P14	**TRUE COPY OF THE LETTER DATED 06-02-2018 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.**
EXHIBIT P15	**TRUE COPY OF THE NOTICE DATED 17-02-2017 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

RESPONDENT EXHIBITS

EXHIBIT R1(A)	**TRUE COPY OF THE LOAN APPLICATION DATED 07/07/2010.**