

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 2<sup>ND</sup> DAY OF FEBRUARY 2022 / 13TH MAGHA, 1943

WP(C) NO. 726 OF 2022

PETITIONER :

HDFC BANK LTD.,  
HAVING ITS REGISTERED OFFICE AT HDFC BANK HOUSE,  
SENAPATI, BAPAT MARG, LOWER PAREL, MUMBAI - 400 013  
AND HAVING BRANCHES ALL OVER INDIA INCLUDING ONE AT  
KALOOR IN ERNAKULAM DISTRICT AND HAVING ITS DEPARTMENT  
FOR SPECIAL OPERATIONS AT 1ST FLOOR, CHOICE TOWERS,  
MANORAMA JUNCTION, KOCHI - 682 016 IN THE STATE OF  
KERALA REPRESENTED BY ITS SENIOR MANAGER RAJESH  
ANTONEY, SON OF V.A.JOSEPH, AGED 48 YEARS.

BY ADV LEO GEORGE

RESPONDENTS :

- 1 THE DEBTS RECOVERY TRIBUNAL -I,  
ERNAKULAM, FIFTH FLOOR, HOUSING BOARD BUILDING,  
MANORAMA JUNCTION, PANAMPILLY NAGAR,  
ERNAKULAM - 682 035,  
REPRESENTED BY ITS PRESIDING OFFICER.
- 2 THE REGISTRAR,  
THE DEBTS RECOVERY TRIBUNAL-I, ERNAKULAM,  
FIFTH FLOOR, HOUSING BOARD BUILDING,  
MANORAMA JUNCTION, PANAMPILLY NAGAR,  
ERNAKULAM - 682 035.
- 3 M/S.MAMMU MARKETING  
48/765 D, M.V.COMPLEX, VELLAKKADA PARAMBU LANE,  
DESHABHIMANI ROAD, KOCHI - 682 026,  
A PROPRIETORSHIP CONCERN REPRESENTED BY ITS  
PROPRIETRIX SMT.SAJEENA M.K.
- 4 SMT. SAJEENA M.K.,  
PROPRIETRIX, M/S.MAMMU MARKETING, SHAMILA MANZIL,  
486/863-B, MAMANGALAM - POTTAKUZHI ROAD,  
KOCHI - 682 026.

5           ANSAR MAMMU,  
              MOIDEENKA HOUSE, SURKAPALLYPARAMBU,  
              KAPPALANDIMUKKU, KOCHI - 2.

              BY ADVS.  
              JOBI.A.THAMPI  
              C.M.EBRAHIM FOR R3 TO R5  
              SHOUKATH HUSAIN

              THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
02.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.726 of 2022**

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**Dated this the 2<sup>nd</sup> day of February, 2022**

**JUDGMENT**

Petitioner was the applicant in OA.No.593/2017 before the Debt Recovery Tribunal-I, Ernakulam. The final order in the said original application was rendered on 30.08.2018 pursuant to which a recovery certificate was issued. While the recovery proceedings were continuing, respondents 3 to 5, who were the borrowers and guarantors, cleared the entire liability. On repaying the entire liability, petitioner filed an application before the Tribunal seeking to recall the recovery certificate issued by the Tribunal as well as for the return of original sale deed No.525/1/2013 of the Sub Registry Office, Kochi, produced and marked as Ext.A9 before the Tribunal. The grievance of the petitioner is that due to the non-functioning of the Tribunal for the last several months, petitioner is unable to abide by their obligation to return the title deeds to respondents 3 to 5. It is in such circumstances that they have invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

2. Adv.C.M.Ebrahim, who appeared for respondents 3 to 5 submitted that they were the borrowers and had with great difficulty cleared the entire liability due to the bank on the basis of an understanding and they are entitled to receive the documents of title submitted before the Tribunal. It was pointed out that the delay in getting the title deeds is causing great prejudice to them and the absence of the Presiding Officers of the Tribunal has upset their entire financial planning.

3. Having considered the contentions raised and on a perusal of the pleadings, I am of the view that this is a fit case where the jurisdiction of this Court under Article 226 of the Constitution of India can be invoked.

4. There are two Debts Recovery Tribunals for the entire State of Kerala. Unfortunately, for the last several months, both Tribunals in Kerala are not functioning, bringing to a halt an opportunity for the litigants to have access to a court of law and, inevitably, great misery to the litigant public. The litigants - both the financial institutions as well as the borrowers/guarantors, are being put to irreparable hardships. Without a forum to agitate their grievance, the litigants are facing deprivation of their property and the Central Government has shown scant regard to the hardships

and trauma of the litigants. The statutory mandate of appointing Tribunals are being ignored without any reason.

5. The unfortunate situation in the functioning of the Debts Recovery Tribunal in Kerala started in March, 2021 with one of the two Presiding Officers of the Tribunal resigning/retiring. The situation was compounded when the second Presiding Officer also followed suit in September, 2021. Thus a grim situation has been prevailing in Kerala for the past more than five months, if not almost 10 months and the litigants are knocking at the doors of this Court repeatedly seeking to allay their grievances. Though in between, sometime in the month of October, 2021, on the query of this Court, the Central Government had informed that the Presiding Officers will be appointed soon, nothing happened. Later, some temporary arrangement was made during the Christmas holidays of 2021, but that was also short-lived. This Court cannot shut its eyes to the outright infringement of the rights of the litigants.

6. It is pertinent to refer to the trite law that lack of a forum to agitate a grievance occasions denial of access to justice and access to justice is a fundamental right under the Constitution. An effective adjudicatory mechanism is also a facet of the said fundamental right as held in **Anita Kushwaha v. Pushap Sudan [(2016) 8 SCC 509]**. Therefore, when the fundamental right to

have access to justice is denied, due to the absence of Presiding Officers of the forum created under the statute, the aggrieved are entitled to knock at the doors of this Court under Art.226 or 227 of the Constitution of India. The following observations of the Constitution Bench in the above referred case are relevant and may throw light upon the need to have a functioning Tribunal:

*" Four main facets that, in our opinion, constitute the essence of access to justice are:*

- i) The State must provide an effective adjudicatory mechanism;*
- ii) The mechanism so provided must be reasonably accessible in terms of distance;*
- iii) The process of adjudication must be speedy; and*
- iv) The litigant's access to the adjudicatory process must be affordable."*

7. Of the above four facets, the explanation given under the head of the first is relevant, which is as below:

*"(i) The need for adjudicatory mechanism: One of the most fundamental requirements for providing to the citizens access to justice is to set - up an adjudicatory mechanism whether described as a Court, Tribunal, Commission or Authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its instrumentalities.  
....."*

8. It is clear that the adjudicatory mechanism of Debts Recovery Tribunal is thus not available in Kerala.

9. Be that as it may, on a consideration of the circumstances submitted by the learned Counsel for both parties, it is evident that respondents 3 to 5 had cleared the entire liability due to the petitioner. Therefore, nothing stands in the way of recording the full and final settlement of the amounts due under the recovery certificate, except for the absence of the Presiding Officer. Hence this is a fit case to exercise the jurisdiction under Article 226 and 227 of the Constitution of India. In view of the above, I record the receipt of the amounts due to the petitioner herein in full and final satisfaction of the liability due to the applicant in OA.No.593/2017 before the Debts Recovery Tribunal-I, Ernakulam.

10. While appreciating the submission of the learned counsel for the petitioner that they do not intend to pursue the recovery any further, pursuant to the final order in O.A.No.593/2017, I direct the recovery certificate issued in OA.No.593/2017 to be recalled. Further, there shall be a direction to the 2<sup>nd</sup> respondent to return the original of sale deed No.525/1/2013 of the Sub Registry Office, Kochi dated 06.02.2013 and produced as Ext.A9 in OA.No.593/2017 to the petitioner to enable it to release the documents of title to the

mortgagors. The needful shall be done by the 2<sup>nd</sup> respondent, as expeditiously as possible, in a time-bound manner, at any rate, within a period of thirty days from the date of receipt of this judgment.

The writ petition is allowed as above.

Sd/-  
**BECHU KURIAN THOMAS**  
**JUDGE**

RKM

APPENDIX OF WP(C) 726/2022

PETITIONER'S EXHIBITS :

- Exhibit P1                    TRUE COPY OF THE FINAL ORDER PASSED BY  
THE DEBTS RECOVERY TRIBUNAL-I, ERNAKULAM  
IN OA NO.593/2017 DATED 30/08/2018.
- Exhibit P2                    TRUE COPY OF THE INTERLOCUTORY  
APPLICATION FILED BY THE PETITIONER IN OA  
NO.593/2017 FOR RETURN OF DOCUMENTS.
- Exhibit P3                    TRUE COPY OF INTERLOCUTORY APPLICATION  
FILED BY THE PETITIONER IN OA NO.593/2017  
FOR CERTIFIED COPY.