



2024:KER:18508

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 5TH DAY OF MARCH 2024 / 15TH PHALGUNA, 1945

WP(C) NO. 24087 OF 2023

PETITIONERS:

1 AJMAL K.V,
AGED 42 YEARS
PANAYULLAKANDY IRINGATH PO,
PAYYOLY, KOZHIKODE - 673523.

2 JASIYA MARIYAM N.C,
AGED 37 YEARS
PANAYULLAKANDI, IRINGATH PO,
PAYYOLI, KOZHIKODE - 673523.

BY ADVS.
ADARSH KUMAR
K.M.ANEESH
DILEEP CHANDRAN
SHASHANK DEVAN

RESPONDENTS:

1 UNION BANK OF INDIA,
REPRESENTED BY ITS AUTHORIZED OFFICER,
UNION MSME FIRST BRANCH, KOZHIKODE,
1ST FLOOR, PARCO COMPLEX, KALLAI ROAD,
KOZHIKODE, PIN - 673002.

2 M/S.KERALA TRANSPORT COMPANY,
KTC BUILDING, YMCA ROAD,
CALICUT PIN - 673001
REPRESENTED BY ITS MANAGING PARTNER.

3 M/S. KALPAKA TRANAPORT COMPANY PVT. LTD,
KTC BUILDING, YMCA ROAD,
CALICUT PIN - 673001
REPRESENTED BY ITS MANAGING DIRECTOR.



2024:KER:18508

W.P.(C) Nos.24087 & 27867 of 2023

: 2 :

BY ADVS.
MURALIKRISHNAN C
BIJU ABRAHAM
P.I.RAHEENA
ABRAHAM GEORGE JACOB
SHAHNA
B.G.BHASKAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.03.2024, ALONG WITH WP(C).27867/2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2024:KER:18508

W.P.(C) Nos.24087 & 27867 of 2023

: 3 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 5TH DAY OF MARCH 2024 / 15TH PHALGUNA, 1945

WP(C) NO. 27867 OF 2023

PETITIONERS:

- 1 AMMASAIGOUNDER NATARAJAN
AGED 71 YEARS, S/O PALANIGOUNDER AMMASAIGOUNDER,
172 SEDAN THOTTAM THOTTIPALAYAM,
COIMBATORE - 641668.
- 2 SUBRAMANIAM K
AGED 58 YEARS, S/O KARAPPUSWAMY GOUNDER,
1/153C, MUMMY THOTTAM,
COIMBATORE, PIN - 641688.

BY ADVS.
MADHU RADHAKRISHNAN
NELSON JOSEPH
M.D.JOSEPH
DEEPAK ASHOK KUMAR

RESPONDENTS:

- 1 UNION BANK OF INDIA
REPRESENTED BY ITS AUTHORIZED OFFICER,
UNION MSME FIRST BRANCH, KOZHIKODE,
P' FLOOR, PARCO COMPLEX, KALLAI ROAD,
KOZHIKODE, PIN - 673002.
- 2 M/S. KERALA TRANSPORT COMPANY
KTC BUILDING, YMCA ROAD,
CALICUT PIN - 673001
REPRESENTED BY ITS MANAGING PARTNER.
- 3 M/S. KALPAKA TRANSPORT COMPANY PVT.LTD
KTC BUILDING, YMCA ROAD,
CALICUT PIN - 673001
REPRESENTED BY ITS MANAGING DIRECTOR.



2024:KER:18508

W.P.(C) Nos.24087 & 27867 of 2023

: 4 :

BY ADVS.
MURALIKRISHNAN C
BIJU ABRAHAM
ABRAHAM GEORGE JACOB
P.I.RAHEENA
SHAHNA
B.G.BHASKAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.03.2024, ALONG WITH WP(C).24087/2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.24087 & 27867 of 2023

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N. NAGARESH, J.

.....

W.P.(C) Nos.24087 and 27867 of 2023

.....

Dated this the 5th day of March, 2024

J U D G M E N T

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The petitioners in these writ petitions are auction purchasers who had purchased secured assets which were put for sale by the 1st respondent-Union Bank of India. The petitioners deposited the entire auction amount. The 1st respondent-Bank, however, granted One Time Settlement facility to the borrowers and cancelled the sale in favour of the petitioners.

2. In respect of the e-auction sale that was conducted on 21.12.2022 by the 1st respondent-Bank, certain applicants, who mortgaged the properties in question to the Bank, approached the Debts Recovery Tribunal-I, Ernakulam filing SA Nos.414/2022 and 415/2022, assailing the e-auction sale



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notice bearing reference No.RO/KOZ-SALE/2022-2023. In the said applications, the Tribunal recorded that e-auction sale was conducted on 21.12.2022 in favour of the petitioners. The Tribunal initially passed interim orders staying confirmation of the e-auction sale. The SAs were amended challenging the e-auction sale conducted on 21.12.2022.

3. The SAs were taken up for hearing on 20.06.2023. The petitioners in the SA filed affidavit stating that proposal submitted by the 1st respondent-Bank for One Time Settlement has been accepted by the Bank as per sanction order dated 08.05.2023 and that the Bank has decided to discontinue recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The applicants requested the Tribunal to pass orders on sanction of One Time Settlement Scheme and closure of SAs in view of the OTS sanction. The Tribunal dismissed the SAs stating that the SAs have become infructuous in view of the sanctioning of OTS by the 1st respondent-Bank.



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4. It is evident from the pleadings and arguments raised at the Bar that the petitioners in W.P.(C) No.24087/2023 have paid ₹2,88,50,000/- by 05.01.2023 in respect of Schedule Item No.19 property. The petitioners in W.P.(C) No.27867/2023 paid ₹4,35,52,000/- towards purchase of Schedule Item No.15 property. The petitioners state that they had requested the Bank to confirm the sale in their favour. However, the 1st respondent-Bank replied as per communication dated 24.07.2023 that the Bank has cancelled the sale and returned the bid amount since a One Time Settlement has been arrived at between the Bank and the borrower.

5. Counsel for the petitioners argued that the cancellation of sale is illegal and unsustainable. Section 13(8) of the SARFAESI Act incorporates the principle of right of redemption of a mortgagor. Till the year 2016, the right of redemption was available till date of sale. However, after amendment to the Act, the right of redemption of mortgagor comes to an end on the date of publication of notice for public



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auction.

6. Once auction notice is published, the mortgagor loses the right to redeem the secured asset. The statute has given a free hand to the secured creditor to enforce any security interest without the interruption of the court or Tribunal.

7. The petitioners state that the cancellation of e-auction sale and refusal of the Bank to issue Sale Certificate in favour of the petitioners, is unlawful and unprecedented and exposes unholy nexus between the Bank and mortgagors of the property. The Bank is not justified in cancelling the e-auction sale after the petitioners remitting in full the entire sale price.

8. The counsel for the petitioners pointed out that SA Nos.414/2022 and 415/2022 were dismissed by the Debts Recovery Tribunal without any specific observation against the e-auction conducted on 21.12.2022. Therefore, after the orders of the Debts Recovery Tribunal in the SAs, the right and claim of the petitioners as auction purchasers are fortified.



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9. The petitioners therefore prayed to issue a writ of mandamus directing the 1st respondent to issue sale certificate in favour of the petitioners with respect to the properties bid in auction by them. Alternatively, the petitioners seek to direct the 1st respondent-Bank to return the sale auction amount with interest at the rate of 18% from the date of deposit.

10. The 1st respondent-Bank resisted the writ petitions filing counter affidavit. The 1st respondent stated that when respondents 2 and 3, who had availed various credit facilities from the Bank, defaulted in repayment, the loan accounts were declared as NPA and recovery action was initiated. The Bank published Ext.R1(a) sale notice dated 09.11.2022 scheduling e-auction on 21.12.2022.

11. The petitioners participated in the e-auction and were declared as successful bidders in respect of two items of property.

12. The Bank, however, did not confirm the sale in favour of the petitioners as the Tribunal had passed interim stay orders against confirmation of sale. In the meanwhile,



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respondents 2 and 3 approached the Bank for One Time Settlement of loan accounts. By Ext.R1(b) communication dated 08.05.2023, the Bank sanctioned One Time Settlement. As per the terms of One Time Settlement, the properties mortgaged including the properties which were auctioned in favour of the petitioners, had to be released in favour of the respective mortgagors on receipt of payment as per the One Time Settlement.

13. The 1st respondent argued that although the petitioners were successful bidders, the sale was not confirmed and therefore the petitioners did not acquire any interest, right or title over the said property. As the 1st respondent-Bank withdrew from recovery proceedings under the SARFAESI Act consequent to a One Time Settlement with the borrowers, the auction in favour of the petitioners was cancelled. The cancellation was duly communicated to the petitioners. The Debts Recovery Tribunal allowed the application filed by the borrowers taking note of the settlement. The settlement contemplated that the mortgaged



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properties put for auction and against which bids were received, are to be released to the respective mortgagors. The petitioners did not raise any objection against the terms of OTS or against the withdrawal of SA pursuant to OTS. The writ petitions are therefore without any merit.

14. Regarding the maintainability of the writ petitions against cancellation of auction, the counsel for the petitioners relied on the judgment of the Apex Court in **Godrej Sara Lee Limited v. The Excise and Taxation Officer-cum-Assessing Authority and others** [AIR 2023 SC 781] and the judgment in **Commissioner of Income Tax and others v. Chhabil Dass Agarwal** [(2014) 1 SCC 603]. The counsel for the petitioners contended that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternate remedy is available, is a rule of self imposed limitation and essentially a rule of policy, convenience and discretion rather than a rule of law.

15. The counsel for the petitioners pointed out that the right of the borrower to redeem the secured asset stands



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extinguished on the very date of publication of the notice for public auction under Rule 9(1) of the Security Interests (Enforcement) Rules. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules, 2002 and not till the completion of sale or transfer of the secured assets in favour of the auction purchaser. The counsel also relied on the judgment in ***Celir LLP v. Bafna Motors (Mumbai) Private Limited and others*** [(2024) 2 SCC 1].

16. The counsel for the borrowers, on the other hand, relying on the judgment in ***Agarwal Tracom Private Limited v. Punjab National Bank*** [2017 (4) KLT 1131], argued that cancellation of an auction is a part of the measures specified in Section 13(4) of the SARFAESI Act and the petitioners have to resort to Section 14 for redressal of their grievances.

17. I have heard the learned counsel for the petitioners, the learned Standing Counsel appearing for the Bank and the learned counsel representing the borrowers.



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18. In W.P.(C) No.27867/2023, the petitioners are auction purchasers. The bid of the auction purchasers was responded to by the Bank and the Bank accepted ₹4,35,52,000/- towards bid amount on 01.03.2023. In W.P.(C) No.24087/2023, the bid of the petitioners were accepted in the e-auction sale conducted on 21.12.2022 and the petitioners remitted ₹2,88,50,000/-. However, subsequently, the Bank entered into a One Time Settlement with the borrowers and cancelled the auction proceedings.

19. The contention of the petitioners is that the conduct of the respondent-Bank in unilaterally cancelling the e-auction sale behind the back of the petitioners is illegal. The Bank is bound to issue Sale Certificates in favour of the petitioners.

20. In W.P.(C) No.27867/2023, the sale notice was published on 09.11.2022. The auction was conducted on 21.12.2022. The petitioners were declared as successful bidders in respect of item No.15 property for an amount of ₹4,35,52,000/-. The sale was not confirmed by the Bank as there was an interim order passed by the Debts Recovery



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Tribunal in SA No.415/2022 and in SA No.414/2022.

21. The said SAs were filed by the borrowers. At the instance of the Tribunal, the petitioners being auction purchasers were impleaded in the SA. The petitioners had deposited the sale consideration. However, the Bank did not confirm the sale in view of the interim order of the Debts Recovery Tribunal.

22. In W.P.(C) No.24087/2023, e-auction sale was conducted on 21.12.2022. The petitioners-auction purchasers remitted ₹2,88,50,000/- towards sale price for items No.19 property. But, in view of the interim orders of the Tribunal, the Sale Certificate was not issued.

23. It is to be noted that the acceptance of bid by itself will not conclude a sale. Sale would be concluded only when the Bank finally confirms acceptance of the bid and issues Sale Certificate. In the case of the petitioners, though the petitioners have deposited bid amount, the Bank did not conclude the auction sale for the reason that there were interim orders passed by the Debts Recovery Tribunal against



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the auction sale.

24. When the borrowers offered a One Time Settlement in the meanwhile, the Bank has accepted the proposal. There is nothing which prevents the Bank from entering into a One Time Settlement with the borrowers as long as auction sale of the property is not concluded by issuance of Sale Certificate. In these cases, such One Time Settlements were placed before the Debts Recovery Tribunal. The Debts Recovery Tribunal directed the borrowers to implead the auction purchasers in the SA. The petitioners were thus impleaded in the proceedings before the Debts Recovery Tribunal. The petitioners did not raise any objections against the One Time Settlement.

25. As long as sale is not confirmed in favour of the petitioners, the petitioners would not acquire any right or interest over the property. As the sale is not confirmed in favour of the petitioners, the petitioners cannot urge that they should be issued with Sale Certificate. In fact, the terms of sale notice itself contain a clause that the sale can be



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cancelled at any time and it is the discretion of the Bank to cancel the same or proceed with the sale. As the sale is not confirmed in favour of the petitioners herein, the petitioners have not acquired any interest or right over the property auctioned.

26. It is true that the right of redemption is available to the borrowers will stand extinguished upon publication of notice of auction. However, that will not prevent the parties to a loan agreement from entering into a One Time Settlement. As long as the sale of the mortgaged assets is not confirmed in favour of the auction purchasers and as long as the Sale Certificates are not issued, the auction purchasers cannot be heard to contend that the Bank should not enter into a One Time Settlement with the borrowers. The prayer of the petitioners to issue Sale Certificate in respect of the auctioned property is unsustainable.

27. However, the fact remains that pursuant to the e-sale conducted by the Bank, the petitioners in both these writ petitions have deposited substantial amount towards purchase



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price, with the Bank. The amount is still in deposit with the Bank. Taking into consideration the facts and circumstances of the case, I am of the view that the 1st respondent-Bank should pay reasonable interest to the petitioners in the writ petitions.

The writ petitions are disposed of declining the prayer of the petitioners to compel the Bank to issue Sale Certificates. However, there will be a direction to the 1st respondent-Bank to refund the amount deposited by the petitioners along with 12% interest from the date of deposit of the amount till the date of refund.

Sd/-

N. NAGARESH, JUDGE

aks/04.03.2024



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APPENDIX OF WP(C) 24087/2023

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE COMMUNICATION DATED 28-02-2023 ISSUED BY THE 1ST RESPONDENT.
Exhibit P2	TRUE COPY OF THE AMENDED SECURITIZATION APPLICATION IN SA NO. 414/2022 FILED BEFORE THE HON'BLE DEBT RECOVERY TRIBUNAL-I, ERNAKULAM.
Exhibit P3	TRUE COPY OF THE AMENDED SECURITIZATION APPLICATION IN SA NO. 415/2022 FILED BEFORE THE HON'BLE DEBT RECOVERY TRIBUNAL-I ERNAKULAM.
Exhibit P4	TRUE COPY OF ORDER DATED 20-06-2023 PASSED BY THE HON'BLE DEBT RECOVERY TRIBUNAL-I, ERNAKULAM IN SA NO. 414/2022.
Exhibit P5	TRUE COPY OF ORDER DATED 20-06-2023 PASSED BY THE HON'BLE DEBT RECOVERY TRIBUNAL-I, ERNAKULAM IN SA NO. 415/2022.
Exhibit P6	TRUE COPY OF THE COMMUNICATION DATED 21-06-2023 ISSUED BY THE PETITIONERS TO THE RESPONDENT BANK.
Exhibit P7	TRUE COPY OF THE COMMUNICATION DATED 21-06-2023 ISSUED BY THE RESPONDENT BANK TO THE PETITIONERS.
Exhibit P8	TRUE COPY OF COMMUNICATION DATED 08-05-2023 ISSUED BY THE RESPONDENT BANK.
Exhibit P9	TRUE COPY OF THE COMMUNICATION DATED 05-07-2023 ISSUED BY THE PETITIONERS TO THE RESPONDENT BANK.

RESPONDENT'S EXHIBITS

Exhibit R1(a)	A TRUE COPY OF THE AUCTION NOTICE DATED 09/11/2022 ISSUED BY THE AUTHORISED OFFICER OF THE 1ST RESPONDENT BANK.
Exhibit R1(b)	A TRUE COPY OF THE SETTLEMENT OF ONE TIME SETTLEMENT TERMS.



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APPENDIX OF WP(C) 27867/2023

PETITIONERS' EXHIBITS

- Exhibit P 1 TRUE COPY OF THE COMMUNICATION DATED 1-3-2023 ISSUED BY THE 1ST RESPONDENT.
- Exhibit P2 TRUE COPY OF THE AMENDED SECURITIZATION APPLICATION IN SA NO. 414/2022 FILED BEFORE THE HON'BLE DEBT RECOVERY TRIBUNAL-L, ERNAKULAM WITHOUT ANNEXURES.
- Exhibit P3 TRUE COPY OF THE AMENDED SECURITIZATION APPLICATION IN SA NO. 415/2022 FILED BEFORE THE HON'BLE DEBT RECOVERY TRIBUNAL-I, ERNAKULAM.
- Exhibit P4 TRUE COPY OF ORDER DATED 20-06-2023 PASSED BY THE HON'BLE DEBT RECOVERY TRIBUNAL-I, ERNAKULAM IN SA NO. 414/2022.
- Exhibit P5 TRUE COPY OF ORDER DATED 20-06-2023 PASSED BY THE HON'BLE DEBT RECOVERY TRIBUNAL-I, ERNAKULAM IN SA NO. 415/2022.
- Exhibit P6 TRUE COPY OF THE E-COMMUNICATION DATED 22-06-2023 ISSUED BY THE PETITIONERS TO THE RESPONDENT BANK.
- Exhibit P7 TRUE COPY OF THE COMMUNICATION DATED 24-07-2023 ISSUED BY THE 1ST RESPONDENT BANK TO THE PETITIONERS.
- Exhibit P8 TRUE COPY OF COMMUNICATION DATED 08-05-2023 ISSUED BY THE RESPONDENT BANK.
- Exhibit P9 TRUE COPY OF THE EMAIL SENT BY THE PETITIONERS TO THE RESPONDENT BANK DATED 12/8/2023.

RESPONDENT'S EXHIBITS

- Exhibit R1 (a) A TRUE COPY OF THE AUCTION NOTICE DATED 09/11/2022 ISSUED BY THE AUTHORISED OFFICER OF THE 1ST RESPONDENT BANK.
- Exhibit R1(b) A TRUE COPY OF THE SETTLEMENT OF ONE TIME SETTLEMENT TERMS.