

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS**

Friday, the 2nd day of December 2022 / 11th Agrahayana, 1944
WP(C) NO. 38962 OF 2022

PETITIONER:

M/S. ANSU ENTERPRISES PRIVATE LTD., AGED 66 YEARS (FORMERLY, M/S ANSU ENTERPRISES), NO 14, SREENAGAR, MANACAUD P.O, THIRUVANANTHAPURAM - 695 009, REPRESENTED BY ITS MANAGING DIRECTOR, K.VENUGOPALAN NAIR, S/O KRISHNA PILLAI, CHITHIRAMVEEDU, T.C 25/1497, THENGUVILAKOM, SS KOVIL ROAD, THAMPANOR, THIRUVANANTHAPURAM , PIN - 695001

RESPONDENTS:

1. THE REGISTRAR DRT-1 ERNAKULAM, HOUSING BOARD BUILDING (5TH FLOOR), PANAMPALLY NAGAR, ERNAKULAM, COCHI, PIN - 682036
2. CONSORTIUM OF BANKS LED BY UNION BANK OF INDIA ERNAKULAM BRANCH, UNION BANK BHAVAN, GROUND FLOOR, M.G ROAD, KOCHI - 682 035, KERALA STATE, REPRESENTED BY ITS GENERAL MANAGER AND POWER OF ATTORNEY HOLDER, PIN - 682035
3. UNION OF INDIA MINISTRY OF FINANCE REPRESENTED BY ITS SECRETARY, DEPARTMENT OF ECONOMIC AFFAIRS, BOARD OF INDUSTRIAL AND FINANCIAL RECONSTRUCTION, JAWAHAR VYAPAR BHAWAN, I, TOLSTOY MARG, NEW DELHI , PIN - 110001

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the Ext. P1 notification till the final disposal of this Writ Petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S. S.SUJIN & A.B.MOHANAKUMAR, Advocates for the petitioner, M/S. A.V.THOMAS (SR.), A.KEVIN THOMAS, NIDHI SAM JOHNS & LIJO JOSEPH (THOPPIL), Advocates for R2, the court passed the following:

BECHU KURIAN THOMAS, J.

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Dated this the 2nd day of December, 2022

ORDER

Admit. Issue notice by speed post to the first respondent. Adv. Kevin Thomas takes notice for the second respondent and Adv.S.Manu, learned Deputy Solicitor General of India takes notice for the third respondent.

2. On 4.10.2022, the Ministry of Finance issued a notification as No.S.O.4717(E) purportedly in exercise of the powers under section 3 of the Recovery of Debts and Bankruptcy Act, 1993 (for short 'RDB Act') notifying the jurisdiction of various Debts Recovery Tribunals. This notification is produced as Ext.P1 and is impugned in this writ petition.

3. As per serial No.1 of the notification, the jurisdiction in respect of applications involving debt amount of Rs.100 Crores and above falling within the jurisdiction of Debts Recovery Tribunals specified therein (which includes Debts Recovery Tribunal-I and Debts Recovery Tribunal-II, Ernakulam), have been varied and conferred upon Debts Recovery Tribunal-I, Chennai. Change is also specified in respect of other Debts Recovery Tribunals with which the petitioner is not concerned with.

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4. Sri.N.N.Sugunapalan, learned Senior Counsel duly instructed by Sri.A.B.Mohanakumar contended that when a securitisation application challenging the sale of petitioner's property was filed before the Debts Recovery Tribunal, Ernakulam, the Registry of the DRT Ernakulam returned the application relying upon the impugned notification and directed it to be presented before the appropriate forum since the sale notice was for the recovery of a sum of Rs.976.57 Crores. The learned Senior Counsel contended that the notification issued under the RDB Act specifying jurisdiction for applications under the said Act cannot apply to the applications filed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act').

5. It was further contended that the provisions of sections 3, 17 and 19 when read with section 2B of the RDB Act will clearly indicate that Ext.P1 notification, if valid, can apply only to applications filed by the financial institutions or banks under the RDB Act and cannot apply to applications under the SARFAESI Act filed by individual borrowers or oust the jurisdiction of the existing DRT's. It was further submitted that a notification issued under one statute has to be confined to that statute alone and cannot apply to the provisions of other statutes. In any event, it was also submitted that by virtue of Ext.P1 notification, the right of access of the petitioner and other similarly situated

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persons to a court of law has been prejudicially affected by taking it out of the State of Kerala and conferring it upon a Tribunal in another State which renders the fundamental right practically otiose. In such circumstances, the learned counsel contended that the notification itself is ex-facie arbitrary and violative of Article 14 of the Constitution of India.

6. I have heard the learned Counsel Sri. A.V.Thomas duly assisted by Adv. Kevin Thomas on behalf of the 2nd respondent and Adv.S.Manu, learned Deputy Solicitor General of India.

7. Till the date of Ext.P1 notification, the jurisdiction of both Debts Recovery Tribunals in Ernakulam covered applications irrespective of any pecuniary limit. The right of access to a court of law has already been declared to be a fundamental right as held in the decision in **Anita Kushwaha v. Pushap Sudan** [(2016) 8 SCC 509]. The four main facets of the above right were opined in the said Judgment as constituting the essence of access to justice. They 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."*

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8. It needs no reiteration that an effective adjudicatory mechanism which is reasonably accessible in terms of distance, is an essential facet of the said right. (See the decision in **Roger Mathew v. South Indian Bank Limited and Others** [(2020) 6 SCC 1])

9. The borrowers from banks and other financial institutions who are already in dire straits due to the persistent defaults are now forced, by virtue of Ext.P1 notification, to approach a Tribunal in a different State, while the Tribunal in Kerala continues to be in existence. In fact in the decision in **M/s.Kerala Fashion Jewellery and Others v. The Union of India and Others** (MANU/KE/1328/2021) a Division Bench of this Court had held that the jurisdiction of DRT cannot be taken out of the State. Of course, the situation in that case, was different, but the principle squarely applies to the instant case, atleast prima facie. The Bombay High Court has also recently stayed the notification in W.P. No.11164 of 2022.

10. In this context, it is apposite to mention that in the decision in **Union of India and Others v. M/s.Modi Rubber Ltd.** [(1986) 4 SCC 66] the Supreme Court had observed that the notification issued under one statute must be confined to the statute under which the notification was issued and cannot be extended to other statutes.

11. On a consideration of the aforesaid legal issues that arise in

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the instant case, I am of the prima facie view that challenge against Ext.P1 notification as being unconstitutional and arbitrary has substantial merit. Balance of convenience leans in favour of staying the operation of the said notification as otherwise if ultimately the notification is set aside, great prejudice would be caused to all the litigants.

12. Hence, there will be a stay of operation of Ext.P1 notification dated 04-10-2022, to the extent it transfers/confers jurisdiction of all applications involving a debt amount of Rs.100 Crores and above falling within the jurisdiction of Debts Recovery Tribunal-I and Debts Recovery Tribunal-II, Ernakulam with the Debts Recovery Tribunal-I, Chennai, until disposal of this writ petition.

Post on 13.01.2023 after filing counter affidavits.

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF WP(C) 38962/2022

Exhibit P1

**TRUE COPY OF NOTIFICATION NO S.O. 4717(E) DATED
04-10-2022 OF THE MINISTRY OF FINANCE, UNION OF INDIA.**

