



2024/KER/20593

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 15<sup>TH</sup> DAY OF MARCH 2024 / 25<sup>TH</sup> PHALGUNA, 1945

WP(C) NO. 37968 OF 2023

PETITIONER:

SUDHA V. MOHAN  
AGED 64 YEARS  
W/O.MOHAN V., FLAT NO.3D, A BLOCK,  
CHAKKOLAS HABITAT, WILLINGDON ENCLAVE,  
THEVARA FERRY ROAD, THEVERA P.O.,  
ERNAKULAM, PIN - 682013

BY ADVS.  
BABU S. NAIR  
SMITHA BABU

RESPONDENTS:

- 1 THE AUTHORIZED OFFICER  
HDFC BANK LIMITED, RETAIL PORTFOLIO MANAGEMENT,  
HDFC HOUSE, P.B.NO.1667, RAVIPURAM JUNCTION,  
M.G. ROAD, KOCHI, PIN - 682015
- 2 THE MANAGER  
HDFC BANK LIMITED, 1ST FLOOR, MENACHERI TOWERS,  
PARUR JUNCTION, THOTTAKKATTUKARA P.O.,  
ALUVA, ERNAKULAM DISTRICT, PIN - 683108

ADDL.R3 THE SUB DIVISIONAL MAGISTRATE/REVENUE  
DIVISIONAL OFFICER,  
FORT KOCHI, ERNAKULAM DISTRICT, PIN - 682 001.  
[ADDL.R3 IS IMPLEADED AS PER ORDER DATED  
20.11.2023 IN I.A.1/2023 IN WP(C) 37968/2023]



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BY ADVS.  
SRI.K.K.CHANDRAN PILLAI (SR.) (C-41)  
SMT.AMBILY S  
SRI.RUBAN JOE TONIYO(K/002926/2022)  
SRI.MATHEW JOSEPH BALUMMEL(K/001219/2019)  
SMT.REKHA C. NAIR, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 15.03.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



**CR**

**N. NAGARESH, J.**

.....

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.....

*Dated this the 15<sup>th</sup> day of March, 2024*

**J U D G M E N T**

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The petitioner is the wife of Sri. Mohan V., who is a highly successful entrepreneur. But, destiny has thrown the petitioner into a financial and legal imbroglio which she never expected to be in and which she was not prepared to face. Financial disarray and legal disorder have forced the petitioner to approach this Court invoking writ jurisdiction.

2. The petitioner's husband was a highly successful businessman who with his multitasking capabilities, endured in several major business projects across the country.



Successful as he was, the petitioner's husband had several fixed assets including landed properties in Kerala, Karnataka and Tamil Nadu. His "Lakshmi Engineering Works" in Gulbarga is engaged in undertaking major mechanical engineering contracts of paper mills, power plants, chemical plants, etc.

3. While things were moving smoothly, misfortune hit the family from nowhere, like a thunderbolt. The petitioner's husband physically collapsed in the month of March, 2021. He was rushed to Rajagiri Hospital, Aluva on 09.03.2021. The MRI Brain Scan suggested Lipoma and Histopathological correlation. The petitioner's husband was hence shifted to Lakeshore Hospital, Kochi on 24.05.2023. The petitioner's husband had memory disturbance and visual hallucination.

4. In the Lakeshore Hospital, the petitioner's husband underwent navigation guided bifrontal craniotomy and right planum sphenoidale meningioma, on 02.06.2022. Following the said brain surgery, the petitioner's husband



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went into a 'comatose' state. The petitioner's husband is now lying in a vegetable condition. The husband of the petitioner continued as an inpatient in the Lakeshore Hospital till 29.06.2022. As there was no progress, the Hospital authorities discharged the petitioner's husband from the Hospital. The petitioner's husband is now lying in a comatose stage under the care and protection of the petitioner and her children.

5. While the petitioner's husband was agile, he had availed a loan of ₹57,56,504/- for purchase of a land and a loan of ₹1,05,00,000/- for the construction of a commercial building in the property. The loans were sanctioned during 2019-2021. The petitioner's husband had been paying pre-EMIs and EMIs without any default till he was totally bedridden due to cerebral issues.

6. The petitioner and other legal heirs of the husband filed W.P.(C) No.27904/2022 for the purpose of appointing a guardian. By Ext.P4 judgment, this Court directed the petitioners therein to submit application before the



jurisdictional Sub Divisional Magistrate seeking grant of limited guardianship to one among the petitioners to deal with Bank accounts.

7. The petitioner states that utilising the loan availed, a commercial building was constructed by her husband and 99% of the construction was completed. What is remaining now is only the commissioning of lifts of the building. To the predicament of the petitioner, the Bank issued Ext.P5 Section 13(2) notice to the husband of the petitioner and other guarantors. The petitioner therefore requested the Bank to give a short term moratorium to enable the petitioner to raise funds and clear the loan account. The respondents have not taken a pragmatic approach and are going ahead with the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

8. The petitioner states that all the landed assets belonging to the family are in the name of her husband and after disposing a part of the assets, the petitioner can clear



the dues to the Bank. The petitioner seeks permission to dispose of any of the properties of her husband so as to clear the debts towards the Bank. For this purpose, the petitioner seeks to command the respondents to give a moratorium for repayment of loan for a minimum period of eight months and also seeks to reschedule the loan accounts forthwith.

9. I have heard the learned counsel for the petitioner, the learned Senior Government Pleader representing the 3<sup>rd</sup> respondent and the learned Standing Counsel appearing for respondents 1 and 2.

10. The petitioner is now placed in a Catch 22 situation. In spite of availability of assets, which are in the name of the petitioner's husband, the petitioner is not in a position to pay the dues to the Bank. The petitioner's husband is lying unconscious for the last more than 1½ years. He is unresponsive on account of his cognitive disfunction following the brain surgery. He is in a vegetative stage and he is in comatose.



11. Though the petitioner is hemodynamically stable and his heart is functioning on account of the normal pumping of blood, the brain is dead. He is in a state of prolonged irreversible cessation of all brain activities and he has no reflex activity from centres in the brain. He is not in a position to produce a purposeful coordinated voluntary response, in a sustained manner. He is not understanding or communicating or speaking to others. The petitioner's husband has absolutely no capacity or ability to act. The petitioner states that for the treatment and medicines of her husband, a minimum amount of ₹3 lakhs is required every month to keep him in the present state. In such circumstances, though respondents 1 and 2 have a statutory right to proceed for recovery of money advanced, the peculiar situation in this case calls for a humanitarian approach in the matter.

12. The petitioner's husband is now a person with disability as defined under Section 2(s) of the Rights of Persons with Disabilities Act, 2016. Section 12 of the Act,





2016 mandates that the appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any Court, Tribunal, Authority, Commission or any other Body having judicial or quasi judicial or investigative powers without discrimination on the basis of disability.

13. Section 13 of the Act, 2016 provides that the appropriate Government shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to Bank loans, mortgages and other forms of financial credit. When a conflict of interest arises between a person providing support and a person with disability in a particular financial, property or other economic transaction, then such supporting person shall abstain from providing support to the person with disability in that transaction.

14. Section 14 of the Act, 2016 provides for guardianship. Section 14 provides that where a District Court or any designated authority as notified by the State



Government finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner as may be prescribed by the State Government.

15. The proviso to Section 14 states that the District Court or the designated authority may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the court or the designated authority, to determine the nature and manner of support to be provided.

16. The Government of Kerala has issued Ext.P6 Circular dated 03.05.2022 providing guidelines for grant of limited guardianship under the Rights of Persons with Disabilities Act, 2016. Clause II of Ext.P6 guidelines provides that if a Sub Divisional Magistrate is convinced that a person with disability is incapable due to physical or mental



limitations to take a legally binding decision, can be granted limited guardianship. Limited guardianship is granted when even after giving suitable support, the person with disability cannot take a legally binding decision. Transfer of property of the person with disability can also be subject matter of limited guardianship.

17. Clause IV of Ext.P6 guidelines provides that a person with disability or his guardians can submit application for limited guardianship.

18. The petitioner's husband is in a comatose state. He is not in a position to take any decision on his own. The petitioner's husband is facing recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 consequent to the failure to maintain loan account. The failure to maintain loan account is as a consequence of the petitioner's husband becoming a person with disability.

19. The petitioner's husband has landed assets which can be sold in order to pay the dues to the Bank. When the



petitioner's husband cannot take such prudent decisions in view of his medical condition, the petitioner has filed Ext.P6 application under Section 14 of the Rights of Persons with Disabilities Act, 2016 for limited guardianship for disposing of three items of property mentioned in Ext.P6 so as to pay off the liabilities incurred by the petitioner's husband. In the circumstances, the competent authority under the Rights of Persons with Disabilities Act has a legal duty to consider the application for grant of limited guardianship submitted by the petitioner under Section 14 of the Act.

20. In the facts and circumstances of the case, the writ petition is disposed of with the following directions.

- (i) The additional 3<sup>rd</sup> respondent is directed to consider Ext.P6 application submitted by the petitioner under Section 14 of the Act, 2016 and take appropriate decision thereon as expeditiously as possible and at any rate within a period of one month.



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(ii) Respondents 1 and 2 are directed to defer coercive proceedings against the petitioner's husband and his assets for a period of two months.

Sd/-

**N. NAGARESH, JUDGE**

aks/06.03.2024



APPENDIX OF WP (C) 37968/2023

PETITIONER'S EXHIBITS

- Exhibit P1            A TRUE COPY OF THE MEDICAL CERTIFICATE  
ISSUED BY DR. SUDISH KARUNAKARAN,  
LAKESHORE HOSPITAL, DATED, 12-7-2022
- Exhibit P2            TRUE COPY OF THE STATEMENT OF ACCOUNT  
OF LOAN ACCOUNT NO.640187072 OF THE  
2ND RESPONDENT BANK
- Exhibit P3            TRUE COPY OF THE STATEMENT OF ACCOUNT  
OF LOAN ACCOUNT NO.641094926 OF THE  
2ND RESPONDENT BANK
- Exhibit P4            A TRUE COPY OF THE JUDGMENT IN W.P.  
(C)NO.27904/2022 OF THIS HON'BLE COURT  
DATED, 12-10-2022
- Exhibit P5            A TRUE COPY OF THE NOTICE ISSUED TO  
THE HUSBAND OF THE PETITIONER AND  
OTHER GUARANTORS UNDER SECTION 13(2)  
OF THE SARFAESI ACT BY THE FIRST  
RESPONDENT DATED, 16-9-2023
- Exhibit P6            A TRUE COPY OF THE APPLICATION  
SUBMITTED ALONG WITH THE DOCUMENTS  
BEFORE THE ADDITIONAL 3RD RESPONDENT  
DATED, 15-1-2024