



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 10TH DAY OF JANUARY 2024/20TH POUSHA, 1945

WP(C) NO. 33707 OF 2023

PETITIONER:

ABDUL AZEEZ,
AGED 68 YEARS
S/O. PAREETHU, VADAPPILLY HOUSE,
AMBATTUKAVU, ALUVA WEST VILLAGE,
THAIKKATTUKARA P O,
ERNAKULAM DISTRICT, PIN - 683106

BY ADVS.
P. CHANDRASEKHAR
AYPE JOSEPH
MERIN ROSE

RESPONDENTS:

- 1 THE AUTHORIZED OFFICER, PHOENIX ARC. LTD,
REGISTERED OFFICE, 5TH FLOOR,
DANI CORPORATION PARK, 158, CST ROAD,
KALINA, SANTACRUZ (E) MUMBAI - 400098
- 2 ADDL.R2 STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
(ADDL.R2 IS IMPEADED AS PER ORDER DATED
10.012024 IN IA.1/2024)

BY ADVS.
A. KEVIN THOMAS
A. V. THOMAS (SR.) (T-49)
NIDHI SAM JOHNS (K/211/2005)
LIJO JOSEPH (THOPPIL) (K/000537/2013)

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR
ADMISSION ON 10.01.2024, ALONG WITH OP (DRT).453/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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W.P.(C).33707/2023 & OP(DRT).453/2023
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 10TH DAY OF JANUARY 2024/20TH POUSHA, 1945

OP (DRT) NO. 453 OF 2023

SA 66/2018 OF DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONER:

ABDUL AZEEZ
AGED 70 YEARS
S/O. PAREED, VADAPPILLY HOUSE,
AMBATTUKAVU, ALUVA WEST VILLAGE,
THAIKATTUKARA PO ,
ERNAKULAM DISTRICT., PIN - 683106

BY ADVS.
AYPE JOSEPH
MERIN ROSE

RESPONDENT:

THE AUTHORIZED OFFICER
PHOENIX ARC. LTD., REGISTERED OFFICE,
5TH FLOOR, DANI CORPORATION PARK, 158,
CST ROAD, KALINA, SANTACRUZ (E) MUMBAI.,
PIN - 400098

BY ADVS.
NIDHI SAM JOHN
LIJO JOSEPH (THOPPIL) (K/000537/2013)
A.KEVIN THOMAS (K/639/2014)

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR
ADMISSION ON 10.01.2024, ALONG WITH WP(C).33707/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C).33707/2023 & OP(DRT).453/2023
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CR

N. NAGARESH, J.

.....

W.P.(C) No.33707 of 2023
and OP(DRT) No.453 of 2023

.....

Dated this the 10th day of January, 2024

J U D G M E N T

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The petitioner in W.P.(C) No.33707/2023, who is a Class A Contractor approved by the Government of Kerala, has filed this writ petition seeking to set aside Ext.P3 order passed by the Chief Judicial Magistrate, Thrissur. Ext.P3 order has been passed by the Chief Judicial Magistrate, Thrissur in MC No.441/2023 filed by the respondent-Asset Reconstruction Company. By Ext.P3 order, the Chief Judicial Magistrate has appointed an Advocate Commissioner to assist the Company to take possession of



the petition schedule property, invoking Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The petitioner had availed financial advance from the South Indian Bank. The petitioner met with an accident in the year 2015 and was under continued treatment and had to undergo a major surgery. As the petitioner defaulted payments, the Bank invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to recover the amounts due from the petitioner.

3. The petitioner was informed that the assets and liabilities in respect of the loan account of the petitioner had been assigned to the respondent-Asset Reconstruction Company on 17.03.2017 as per Ext.P2. On 06.07.2017, the respondent informed the petitioner that symbolic possession of the secured asset has been taken. The petitioner hence filed SA No.66/2018 before the Debts Recovery Tribunal-I, Ernakulam, which is pending.



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4. It is during the pendency of SA No.66/2018 that the respondent filed MC No.441/2023 before the Chief Judicial Magistrate's Court. The counsel for the petitioner argued that MC No.441/2023 is not maintainable. Ext.P2 agreement assigning the secured assets to the respondent-Asset Reconstruction Company, is not enforceable. Ext.P2 assignment deed is not executed on sufficient stamp paper. Ext.P2 is in violation of the provisions contained in the Kerala Stamp Act, 1959. The respondent is not a State or instrumentality of the State. The respondent is therefore not exempted from paying stamp duty.

5. The counsel for the petitioner argued that stamp duty at the rate of 8% has to be paid on Ext.P2 assignment/agreement in view of Article 22 in the Kerala Stamp Act. The respondent has paid only ₹500/- towards stamp duty. Therefore, Ext.P2 cannot be relied upon.

6. The counsel for the petitioner further pointed out that the Asset Reconstruction Company as contemplated under Section 3 of the Securitisation and Reconstruction of



Financial Assets and Enforcement of Security Interest Act, 2002 should be a Trust. The respondent has not produced any document to show that the respondent is a Trust.

7. When the petitioner filed IA No.2614/2023 praying to stay all further proceedings pursuant to a dispossession notice, the Debts Recovery Tribunal dismissed the IA holding that the petitioner has miserably failed to make out a *prima facie* case so as to get the relief sought for in the IA. The petitioner therefore filed OP(DRT) No.453/2023 seeking to set aside Ext.P3 order dated 24.08.2023 in IA No.2614/2023 in SA No.66/2018.

8. In the OP(DRT), the petitioner contended that the notice of dispossession has been issued by the respondent without following the statutory requirements under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioner had already filed a proposal for One Time Settlement. The petitioner requested the respondent to consider his case compassionately since he could not continue the work due to



the fact that huge amount was payable to him by the Kerala Water Authority.

9. Standing Counsel entered appearance on behalf of the respondents and resisted the writ petition and OP(DRT). On behalf of the respondent, it is stated that there is no provision under the Kerala Stamp Act, 1969 pertaining to assignment of debts. What is transferred under Ext.P1 is only the debt along with right to enforce the underline securities under law. No conveyance of property has taken place. The reliance on Section 25 of the Kerala Stamp Act is therefore highly deceptive.

10. The counsel for the respondent submitted that the NCLT has passed Ext.P5 order dismissing a petition filed by the respondent. The said order is illegal and the respondent has challenged Ext.P5 order in appeal.

11. The counsel for the respondent further urged that no prejudice will be caused to the petitioner due to deficient stamp duty. The petitioner had filed SA No.66/2018. The Debts Recovery Tribunal granted a conditional stay on



payment of ₹25 lakhs on or before 28.02.2018 and ₹75 lakhs on or before 30.03.2018. The petitioner did not comply with the conditions in the order.

12. The counsel for the respondent further submitted that though the Advocate Commissioner attempted to take physical possession of the residential properties of the petitioner and another mortgagor, she was met with stiff resistance from the petitioner and others. The writ petition and the OP(DRT) are therefore liable to be dismissed, contended the counsel for the petitioners.

13. I have heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

14. The petitioner alleged that Ext.P2 assignment deed is not seen stamped as per the Kerala Stamp Act, 1959. Ext.P2 assignment deed has been executed at Ernakulam. The stamp duty payable for assignment of debt is as conveyance mentioned in Article 22 of schedule of the Act. Therefore stamp duty payable on assignment of debt is



8%. Section 34 of the Kerala Stamp Act provides that insufficiently stamped instruments cannot be used for any purpose unless the stamp duty and penalty is paid.

15. The answer of the Asset Reconstruction Company to the afore ground is that there is no provision under the Kerala Stamp Act, 1959 pertaining to assignment of debts. What is transferred under Ext.P1 is only the debt along with right to enforce the underline securities under law. Section 25 of the Kerala Stamp Act will come into operation only when property is transferred in consideration for debt due to the seller.

16. Section 25 of the Kerala Stamp Act, 1959 provides that where any property is transferred to any person in consideration, wholly or in part, of any debt due to him or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not such debt, money or stock is to be deemed the whole or part, as the case may be of the consideration in respect whereof the



transfer is chargeable with *ad valorem* duty.

17. Article 22 in the Schedule to the Kerala Stamp Act deals with conveyance as defined in Section 2(d) not being a transfer charged or exempted under No.55 immovable property. The Article provides for the rates of stamp duty payable.

18. Section 2(d) of the Kerala Stamp Act, 1959 defines the term “conveyance” as follows:-

“Conveyance” includes,-

- (i) a conveyance on sale;
- (ii) deed of amalgamation of two or more companies whether in pursuance of an order of the National Company Law Tribunal or not;
- (iii) deed of amalgamation in pursuance of the order under Section 44A of Banking Regulation Act, 1949; and
- (iv) every other instrument, by which property, whether movable or immovable or any interest in any property is transferred inter vivos and which is not otherwise specifically provided in the Schedule.

Every document by which movable property is transferred is “conveyance”.



19. The question arising is whether the transfer of loan account by a Bank / financial institution to an Asset Reconstruction Company would amount to “conveyance”. The Reserve Bank of India has issued Master Directions called the Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021. Direction No.9(k) defines transfer in the context of transfer of loan exposures to mean as a transfer of economic interest in loan exposures by the transferor to the transferee, with or without the transfer of the underline loan contract, in the manner permitted.

20. Direction No.11 gives a general condition applicable for all loan transfers and provides that loan transfers should result in transfer of economic interest without being accompanied by any change in underlining terms and conditions of the loan contract usually. Direction 12 makes it clear that in loan participation transactions, by design, the legal ownership completely remains with the transferor even after economic interest has been transferred to the transferee. Proviso to Direction 5 mandates that in



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cases of loan transfers other than loan participation, legal ownership of the loan shall be mandatorily transferred to the transferee to the extent of economic interest transferred only.

21. It is therefore evident that what is transferred by a Bank / financial institution to an Asset Reconstruction Company is only a transfer of economic interest and there is no conveyance of property or proprietary rights. The transfer of legal ownership of the loan is limited to the extent to the economic interest transferred.

22. Article 22 of the Kerala Stamp Act, 1959 takes within its ambit only those conveyances as defined in Section 2(d). Even assuming that transfer of loan interest by a financial institution involves transfer of any interest in the secured asset and therefore it amounts to conveyance, even then such conveyance will not fall in any of the categories mentioned in Article 22.

23. The respondents have not brought to the notice of this Court any other Article in the Schedule to the Kerala Stamp Act prescribing stamp duty for loan transfers by



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financial institutions to the Asset Reconstruction Companies. Therefore, the arguments of the petitioner based on deficit stamp duty is only to be rejected.

24. The petitioner relied on Ext.P5 order of the National Company Law Tribunal in CP(IBC)/51/KOB/2022 wherein the Tribunal has held that insufficiently stamped instrument cannot be used for any purpose. The said finding of the Tribunal is doubtful. The NCLT has taken a contrary view in CP(IBC)/08/KOB/2023 wherein the Tribunal has held that the assignment deed in favour of the Asset Reconstruction Company is not a conveyance relating to immovable property.

25. Article 22 of the Kerala Stamp Act would apply only when there is a sale of immovable property. In the case of the respondent-Asset Reconstruction Company, the Bank has not conveyed any property. What is transferred is only the debt and right to recover the debt. Therefore, the contention of the petitioner that the conveyance itself is invalid, is unacceptable.



26. The Kerala Stamp Act, 1959 is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Stamp Act are concealed in the interest of the revenue. Proceedings under the Securitisation Act are proceedings to enforce security interest, without intervention of the court. It is to be further noted that the registration of the agreement in question is pending consideration before the competent Sub Registrar's Office. In such circumstances, the petitioner cannot be permitted to take the defence of insufficient stamp duty to escape from his liability.

27. The further ground urged by the petitioner is that under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, an Asset Reconstruction Company should be a Trust. The respondent has asserted that the respondent-Company is a Trust and necessary documents can be produced to



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establish that the respondent will satisfy the requirements of Section 3 of the Securitisation Act. I find no reason to disbelieve the statement made by the respondent.

In the afore facts of the case, I do not find any reason to interfere with the proceedings initiated by the respondent. The writ petition and the OP(DRT) are therefore dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/09.01.2024



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APPENDIX OF WP(C) 33707/2023

PETITIONER'S EXHIBITS

Exhibit P1 COPY OF SEC.13(2) NOTICE ISSUED BY THE
RESPONDENT, DATED 24/2/201

Exhibit P2 COPY OF ASSIGNMENT AGREEMENT DATED
17.3.2017

Exhibit P3 COPY OF ORDER OF CJM. THRISSUR DATED
13.6.23

Exhibit P4 COPY OF ORDER IN CMP 7575/2023 IN MC
441/2023 DATED 12.09.2023

Exhibit P5 COPY OF ORDER IN CP(IBC)/51/KOB/2022,
NATIONAL COMPANY LAW TRIBUNAL KOCHI
BENCH DATED 15.2.2023

RESPONDENT'S EXHIBITS

Exhibit R1(a) True copy of the Assignment Agreement
dated 17/03/2017 executed by South
Indian Bank Ltd in favour of the
Petitioner

Exhibit R1(b) True copy of the order dated
13/10/2023 in CP(IBC)/08/KOB/2023 of
the National Company Law Tribunal,
Kochi

Exhibit R1(c) True copy of the judgment dated
12/07/2018 in O.P(DRT) No.50 of 2018
of High Court of Kerala

Exhibit R1(e) True copy of the Order dated
13/10/2022 in I.A No.2176 of 2022 in
SA No.66 of 2018 of the Debts Recovery
Tribunal -1, Ernakulam

Exhibit R1(f) True copy of the judgment dated
02/11/2022 in O.P(DRT) No.407 of 2022
of High Court of Kerala



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Exhibit R1(g) True copy of the Order dated
24.08.2023 in I.A No.2614 of 2023 in
SA No.66 of 2018 of the Debts Recovery
Tribunal -1, Ernakulam

Exhibit R1(d) True copy of the Order dated
17/08/2018 in SLP No.20249/2018 of the
Hon'ble Supreme Court



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APPENDIX OF OP (DRT) 453/2023

PETITIONER'S EXHIBITS

Exhibit P1 THE TRUE COPY OF THE SECTION 13(2)
NOTICE DATED 24.02.2016

Exhibit P2 THE TRUE COPY OF THE NOTICE OF
DISPOSSESSION DATED 26/7/2023

Exhibit P3 THE TRUE COPY OF ORDER IN IA.
2614/2023 IN SA NO.66/2018 DATED
24.8.2023

Exhibit P4 TRUE COPY OF SA. 66/2018

Exhibit P5 TRUE COPY OF IA. 2614/2023

Exhibit P6 TRUE COPY OF ORDER IN OP(DRT) .407/2022

RESPONDENT'S EXHIBITS

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the National Company Law Tribunal,
Kochi