IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 18TH DAY OF JULY 2024 / 27TH ASHADHA, 1946

OP (DRT) NO. 194 OF 2024
AGAINST THE ORDER IN SA NO.750 OF 2023 OF DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONER:

MASTER ADRIEL BRYAN CHERIAN
AGED 16 YEARS
S/O. LATE GEORGE CHERIAN P. V., FLAT NO. 421
EAST HILL APARTMENT, EAST HILL P. O.,
KOZHIKODE 673005 REP BY GUARDIAN (VIDE ORDER DATED 08.04.2022 OF THE DISTRICT & SESSIONS COURT, KOZHIKODE IN GOP NO. 271/2021)
MS. CLARA SHIRLY FERNANDEZ, AGED 52 YEARS (MATERNAL AUNT), W/O. THOMAS JEFFERSON CORREYA, BLUE ROSE, MADURA BAZAR, B. C. ROAD, CHERUVANNUR, FEROKE P. O., KOZHIKODE, PIN – 673631

BY ADVS.
HARISH ABRAHAM
SHYAM PADMAN (SR.)
C.M.ANDREWS
LAYA MARY JOSEPH
ASHWATHI SHYAM
SWATHY SUDHIR
RAM MOHAN
BOBY M.SEKHAR

RESPONDENTS:

1. **THE AUTHORIZED OFFICER**
   STATE BANK OF INDIA, ASSET RECOVERY MANAGEMENT BRANCH, ERNAKULAM, 1ST FLOOR, R.S. BUILDING, OPP. MAHARAJA'S COLLEGE GROUND, M.G. ROAD, ERNAKULAM, PIN - 682011
2. **THE BRANCH MANAGER**
   STATE BANK OF INDIA, EAST HILL BRANCH, EAST HILL ROAD, WEST HILL, KOZHIKODE, PIN - 673005

**3 THE ASSISTANT GENERAL MANAGER
STATE BANK OF INDIA KALLAI HEIGHTS BUILDING,
KALLAI, KOZHIKODE, PIN - 673003**

**4 M/S. SBI LIFE INSURANCE COMPANY LTD.
CENTRE T.C9/1094-1 3RD FLOOR, SASTHA BUILDING,
SASTHAMANGALAM, THIRUVANANTHAPURAM CENTRAL
PROCESSING CENTRE: 7TH LEVEL (D WING) & 8TH
LEVEL, SEAWOODS GRAND CENTRAL, TOWER 2,
PLOT NO. R-1, SECTOR 40, SEAWOODS, NERUL NODE,
THANE, NAVI MUMABI - 400706, PIN - 695010**

**5 THE DEBT RECOVERY TRIBUNAL
OFFICE OF THE DEBT RECOVERY TRIBUNAL
KSHB BUILDING, PANAMPILLY NAGAR
ERNAKULAM, PIN – 68203**

BY ADV TOM K.THOMAS

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON 18.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

N. NAGARESH, J.

O.P.(DRT) No.194 of 2024

Dated this the 18th day of July, 2024

J U D G M E N T

The petitioner, who is an orphan minor and who is represented by his maternal aunt / legal guardian, has filed this OP(DRT) invoking Article 227 of the Constitution of India seeking to call for the records leading to Ext.P19 notice and to quash the same. The petitioner seeks to declare that all measures initiated by the 1st respondent-Authorised Officer of the State Bank of India under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are illegal.

2. The petitioner states that his deceased father availed a Home Loan for an amount of ₹25,92,580/- for purchasing an Apartment unit in the PVS Apartment

Complex, Kozhikode. A one time advance premium of ₹92,580/- was also sanctioned towards Life Insurance Policy in the name of the borrower. The petitioner would submit that the one-time advance premium for the Life Insurance Police was directly transferred to the 2nd respondent to be forwarded to the 4th respondent-Insurance Company.

3. The EMI towards loan were paid promptly till the death of the borrower on 31.12.2018. On 05.03.2019, the 3rd respondent issued a Section 13(2) notice to the petitioner demanding that the loan account may be regularised. The petitioner made request to the Bank to process the Life Insurance Policy in the name of the deceased. The petitioner also issued Ext.P6 legal notice dated 03.06.2019 to the 2nd respondent. Ext.P6 notice was replied with Exts.P7 and P8 wherein the Bank stated that the Life Insurance Policy was rejected by the 4th respondent-Insurance Company. It was further stated that upon rejection of the Life Insurance Policy, the insurance premium instalment of ₹18,660/- was credited by the 3rd respondent into the NRI

account maintained by the borrower.

4. The 2nd respondent filed OA No.501/2019 in the Debts Recovery Tribunal, Ernakulam claiming ₹24,33,578.79 as outstanding payment as on 17.09.2019. The petitioner filed written statement denying the allegations contained in the OA. The petitioner states that at no point of time, the petitioner was put on notice regarding the alleged rejection of insurance coverage.

5. The 1st respondent again issued Ext.P14 notice under Section 13(2) revising the outstanding amount to ₹34,06,414/-. The Bank took symbolic possession of the property on 27.09.2023. The petitioner filed SA No.750/2023 seeking to declare that the measures initiated by the Bank under Section 13(4) is invalid. In the meanwhile, the Bank filed CMP No.2603/2023 in the Chief Judicial Magistrate's Court, Kozhikode and the Chief Judicial Magistrate's Court appointed Advocate Commissioner for taking over possession of the secured asset. The Advocate Commissioner has issued a second notice dated 13.05.2024

(Ext.P19) threatening to take possession of the secured asset.

6. The petitioner states that the borrower was made to believe that he has a Home Loan Insurance Policy and that the processing, documentation and payment of the one time insurance premium will be undertaken by the 2nd respondent-Branch Manager and that the Home Loan Insurance Policy will be retained by the 2nd respondent as security for the Home Loan.

7. The borrower had been duly remitting EMI towards Home Loan as well as one-time insurance premium. Though the 2nd respondent was notified regarding the death of the borrower, the 2nd respondent failed and neglected to take any action to settle the insurance policy. The 2nd and 4th respondents failed to act and also failed and neglected to notify the borrower regarding the alleged rejection of the insurance cover policy. Ext.P19 notice is therefore liable to be quashed.

8. Standing Counsel entered appearance on behalf of respondents 1 to 3. On behalf of the respondents, it is submitted that when the EMIs were defaulted by the borrower, the insurer returned the premium and the balance premium out of the sanctioned insurance loan was remitted back into the account of the borrower. Such remittance was made in the year 2018 itself. Therefore, the petitioner cannot raise any grievance in that regard. The OP(DRT) is liable to be dismissed.

9. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing respondents 1 to 3.

10. A Housing Loan was sanctioned to the petitioner's deceased father, of an amount of ₹25 lakhs. An insurance premium loan of ₹92,850/- was also sanctioned. The borrower passed away on 31.12.2018.

11. The submission of respondents 1 to 3 is that the insurance application was rejected by the Insurer due to non-compliance of the procedure, terms and conditions as

directed by the Insurance Company. The Insurer had returned the premium which was about ₹18,000/-, and the amount credited to the SB account of the borrower during his life time. If that be so, the petitioner cannot raise any legal grievance against respondents 1 to 3. The prayer of the petitioner to declare that all measures initiated by the 1st respondent under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal, is therefore not liable to be granted on the said ground urged by the petitioner.

In the facts and circumstances of the case, the OP(DRT) is disposed of directing the Debts Recovery Tribunal-I, Ernakulam to dispose of SA No.750/2023 as expeditiously as possible and at any rate, within a period of three months.

Sd/-

N. NAGARESH, JUDGE

aks/11.07.2024

APPENDIX OF OP (DRT) 194/2024

PETITIONER'S EXHIBITS

Exhibit P1	**TRUE COPY OF THE BIRTH CERTIFICATE DATED 30.01.2007 ISSUED TO THE PETITIONER BY THE KOZHIKODE CORPORATION**
Exhibit P2	**TRUE COPY OF THE ORDER OF THE DISTRICT & SESSIONS COURT, KOZHIKODE DATED 08.04.2022 IN G.O.P. NO.271/2021**
Exhibit P3	**TRUE COPY OF THE LEGAL HEIRSHIP CERTIFICATE DATED 14.09.2020 ISSUED IN THE NAME OF THE PETITIONER**
Exhibit P4	**TRUE COPY OF THE POWER OF ATTORNEY DATED 18.02.2017 ISSUED IN FAVOUR OF MS. AGNES B. FERNANDEZ ISSUED BY THE BORROWER**
Exhibit P5	**TRUE COPY OF THE ARRANGEMENT LETTER AND THE MEMORANDUM OF LOAN AGREEMENT DATED 16.06.2017 ISSUED BY THE 2ND RESPONDENT**
Exhibit P6	**TRUE COPY OF THE LEGAL NOTICE DATED 03.06.2019**
Exhibit P7	**TRUE COPY OF THE REPLY NOTICES ISSUED BY THE 2ND RESPONDENT DATED 28.06.2019**
Exhibit P8	**TRUE COPY OF THE REPLY NOTICES ISSUED BY THE 4TH RESPONDENT DATED 11.07.2019**
Exhibit P9	**TRUE COPY OF THE APPLICATION O.A. 501/2019 DATED 01.10.2019 DEBT RECOVERY PROCEEDINGS FILED BY THE 2ND RESPONDENT BEFORE THE DEBT RECOVERY TRIBUNAL - 1, ERNAKULAM**
Exhibit P10	**TRUE COPY OF THE WRITTEN STATEMENT DATED 13.01.2020 FILED BY THE PETITIONER IN EXT P10 DEBT RECOVERY PROCEEDINGS**
Exhibit P11	**TRUE COPY OF THE SECTION 13(2) DEMAND NOTICE DATED 26.04.2023, ISSUED BY THE 1ST RESPONDENT**
Exhibit P12	**TRUE COPY OF THE REPLY NOTICE DATED 24.06.2023 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT**

Exhibit P13	**TRUE COPY OF THE REPLY DATED 10.07.2023 ISSUED BY THE 1ST RESPONDENT**
Exhibit P14	**. TRUE COPY OF THE SECOND SECTION 13(2) DEMAND NOTICE DATED 19.07.2023 ISSUED BY THE 1ST RESPONDENT DATED 19.07.2023**
Exhibit P15	**TRUE COPY OF THE NOTICE DATED 27.09.2023 ISSUED BY THE 1ST RESPONDENT IS PRODUCED**
Exhibit P16	**TRUE COPY OF THE S.A NO. 750/2023 DATED 10.11.2023 PENDING BEFORE THE DEBT RECOVERY TRIBUNAL 1, ERNAKULAM**
Exhibit P17	**TRUE COPY OF THE STAY PETITION IN S.A NO. 750/2023 DATED 10.11.2023 PENDING BEFORE THE DEBT RECOVERY TRIBUNAL 1, ERNAKULAM**
Exhibit P18	**TRUE COPY OF THE POSSESSION NOTICE DATED 13.05.2024 ISSUED BY THE ADVOCATE COMMISSIONER APPOINT IN CMP NO.2603/2023 OF THE CJM COURT, KOZHIKODE FOR TAKING POSSESSION OF THE PETITION SCHEDULE PROPERTY ON 13.05.2024**
Exhibit P19	**TRUE COPY OF THE POSSESSION NOTICE DATED 31.05.2024 ISSUED BY THE ADVOCATE COMMISSIONER APPOINT IN CMP NO.2603/2023 OF THE CJM COURT, KOZHIKODE FOR TAKING POSSESSION OF THE PETITION SCHEDULE PROPERTY ON 31.05.2024**
Exhibit P20	**TRUE COPY OF THE BANK ACCOUNT STATEMENT DATED 10.02.2019**
Exhibit P21	**TRUE COPY OF THE BANK ACCOUNT STATEMENTS DATED 26.06.2021**