



2025:KER:9036

W.P (C) No.4147/2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 4TH DAY OF FEBRUARY 2025 / 15TH MAGHA, 1946

WP(C) NO. 4147 OF 2025

PETITIONER/S:

ASHOK HARRY POTHEN,
AGED 62 YEARS
9/114 16, 9/114 17, KOWDIAR MANOR, JAWAHAR NAGAR,
TRIVANDRUM, PIN - 695003

BY ADVS.
V.K.PEERMOHAMED KHAN
GIRISH KUMAR V.C

RESPONDENT/S:

THE AUTHORISED OFFICER,
M/S. INDIAN BANK,
MAIN BRANCH, TRIVANDRUM,
M.G. ROAD, THIRUVANANTHAPURAM, PIN - 695001

SRI. BINOY VASUDEVAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



C.R.

J U D G M E N T

The petitioner has availed a loan from the respondent bank. The loan is secured by the mortgage of an item of property belonging to the petitioner. According to the petitioner, he had entered into an agreement with a company known as M/s. Heera Constructions Pvt. Ltd., for joint development of the said property. It is submitted that M/s. Heera Constructions Pvt. Ltd., was the subject matter of proceedings before the Company Law Tribunal under the provisions of the Insolvency and Bankruptcy Code and a resolution plan has now been approved in respect of M/s. Heera Constructions Pvt. Ltd. It is submitted that the joint venture with the petitioner is also a part of the resolution plan and therefore the respondent bank cannot proceed against the property of the petitioner under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act).

2. The learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in ***Ghanashyam Mishra and Sons Pvt. Ltd through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Ltd through Director and others;*** [2021] 9 SCC 657 in support of his contention. It is submitted that as the



property which is mortgaged with the respondent bank is part of the resolution plan no proceedings can be continued by the respondent bank outside the scope of the resolution plan sanctioned in respect of M/s. Heera Constructions Pvt. Ltd.

3. The learned counsel for the respondent bank submits that the bank is not a party to the resolution plan and as far as the bank is concerned the resolution plan sanctioned in respect of M/s. Heera Constructions Pvt. Ltd., is not binding and has no effect on the proceedings initiated by the bank to recover the amounts due under the loan availed by the petitioner from the respondent bank. It is submitted that even assuming that the development of the property which is the subject matter of the mortgage with the respondent bank is mentioned in the resolution plan of M/s. Heera Constructions Pvt. Ltd., that does not mean that the proceedings in respect of the property are barred. It is submitted that the petitioner is a third party in so far as the resolution plan is concerned.

4. Having heard the learned counsel for the petitioner and the learned Standing counsel for the respondent bank, I am of the opinion that the petitioner cannot be granted any relief in this writ petition. Even assuming that the development of property which is the subject matter of mortgage with the respondent bank is mentioned in the resolution plan of



M/s. Heera Constructions Pvt. Ltd., the petitioner cannot contend on the strength of the judgment of the Supreme Court in ***Ghanashyam Mishra and Sons Pvt. Ltd*** (supra) that the property cannot be proceeded against by the bank under the provisions of the SARFAESI Act. The Supreme Court in ***Ghanashyam Mishra and Sons Pvt. Ltd*** (supra) holds thus:-

“95. In the result, we answer the questions framed by us as under:

*(i) That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and **will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.** On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan; **(emphasis supplied)***

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”



It is thus clear that the bar against any claim outside the resolution plan would apply only to a claim *vis-a-vis* the Corporate debtor and not to a person like the petitioner who claims that he is in agreement with the Corporate debtor. The right of the respondent bank to proceed against the property which has been mortgaged by the petitioner is thus not affected in any manner by any resolution plan in respect of M/s. Heera Constructions Pvt. Ltd., especially when the respondent bank is not even a party to the proceedings before the Company Law Tribunal or the resolution plan. Therefore, I find no merit in the contention taken by the learned counsel for the petitioner that since the petitioner is in agreement with M/s. Heera Constructions Pvt. Ltd., for the development of the property and since a resolution plan has been sanctioned in respect of M/s. Heera Constructions Pvt. Ltd., the respondent bank must be restrained from continuing the proceedings under the SARFAESI Act. The writ petition fails and is dismissed.

5. Faced with this situation the learned counsel for the petitioner submits that the petitioner may be given some time to deposit the amount directed to be paid as a condition for a stay in the securitization appeal, which is pending before the Debts Recovery Tribunal-II, Ernakulam at the instance of the petitioner. Considering the submission of the learned counsel for the petitioner to be reasonable it is directed that the petitioner will continue to



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enjoy the benefit of interim order in I.A. No.3908/2024 in S.A No.632/2024 if the petitioner remits a sum of Rs.25 lakhs on or before 07-02-2025 and a further sum of Rs.25 lakhs on or before 14-02-2025.

Writ petition ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

AMG



APPENDIX OF WP(C) 4147/2025

PETITIONER EXHIBITS

- | | |
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| Exhibit P1 | TRUE COPY OF THE RESOLUTION PLAN |
| Exhibit P2 | TRUE COPY OF THE ORDER IN MC 675 OF 2024
DATED 06/09/2024 |
| Exhibit P3 | TRUE COPY OF THE ADVOCATE COMMISSIONERS
NOTICE |
| Exhibit P4 | TRUE COPY OF THE ORDER DATED 23.10.2024
DOWNLOADED FROM E-DRT PORTAL IN SA NO:
632/2024 ON THE FILES OF DRT-II, ERNAKULAM |
| Exhibit P5 | TRUE COPY OF THE SAID S.A NO. 570/2024
WITHOUT ANNEXURES |