R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 3791 OF 2021 (GM-RES)

C/W

WRIT PETITION NO. 1 OF 2023 (GM-RES)

IN W.P.NO.3791/2021:

BETWEEN:

SRI. N RAVINDRANATH KAMATH,
S/O LATE VENKATESH KAMATH,
AGED ABOUT 52 YEARS,
ADVOCATE,
NO.201 AND 202, 2ND FLOOR, HVS COURT,
NO.21, CUNNINGHAM ROAD,
BANGALORE-500 052.

...PETITIONER

(BY SRI.DIWAKAR K., SENIOR COUNSEL A/W
SRI.N RAVINDRANATH KAMATH.,PARTY IN PERSON)

AND:

1. SRI SUBRAMANYESHWARA CO-OPERATIVE
BANK LIMITED
A BODY CORPORATE CONSTITUTED UNDER
KARNATAKA CO OPERATIVE SOCIETY ACT
HAVING ITS OFFICE AT NO.106,
RAJATHA BHAVAN, R V ROAD, V V PURAM,
BANGALORE-560 004.
BY ITS GENERAL MANAGER.

2. SREE SUBRAMANYESHWARA CO-OPERATIVE BANK LTD
KACHARAKANAHALLI BRANCH,
NO.12, JAI GANESH PLAZA,
KAMMANAHALLI MAIN ROAD,
RAMASWAMY PALYA, BANGALORE-560 033

3. AUTHORISED OFFICER,
SUBRAMANESHWARA CO-OPERATIVE BANK
R V ROAD, V V PURAM, BANGALORE-560 004.

4. THE RESERVE BANK OF INDIA
A BODY CORPORATE CONSTITUTED UNDER RBI ACT
HAVING ITS OFFICE AT RBI BUILDING,
MARATHA MANDIR MARG, MUMBAI CENTRAL,
MUMBAI-400 008.

5. UNION OF INDIA,
BY MINISTRY OF FINANCE
NORTH BLOCK SANSAD MARG,
NEW DEHLI-411 001.
BY ITS SECRETARY,

6. THE STATE OF KARNATAKA,
BY MINISTRY OF CO-OPERATIVE SOCIETY,
VIDHANA SOUDHA,
DR .B.R. AMBEDKAR VEEDHI,
BANGALORE-560 001.
BY ITS SECRETARY

…RESPONDENTS

(BY SMT.LAKSHMY IYENGAR., SENIOR COUNSEL A/W
SRI.K S VENKATARAMANA.,ADVOCATE FOR R3;
SMT. SHWETA KRISHNAPPA., AGA FOR R6;
R1,R2 & R5 ARE SERVED AND UNREPRESENTED;
NOTICE TO R4 IS D/W, V.C.O DATED 17/03/2021)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE SALE INTIMATION/NOTICE UNDER RULE 8(6) OF THE SECURITY INTEREST (ENFORCEMENT RULES) ISSUED BY R-3 HEREIN DTD 19.01.2021 UNDER VIDE ANNX-A AND CONSEQUENTLY DIRECT THE R-1 TO 3 BANK NOT TO AUCTION THE PETITIONERS SCHEDULE MENTIONED PROPERTY AND ETC.,

IN W.P.NO.1/2023:

BETWEEN:

1. SRI. N RAVINDRANATH KAMATH,
   S/O LATE VENKATESH KAMATH,
   AGED ABOUT 52 YEARS,
   SENIOR ADVOCATE,
   NO.201 AND 202, 2ND FLOOR, HVS COURT,
   NO.21, CUNNINGHAM ROAD,
   BANGALORE-500 052.

2. SRI.T.A.RAJASHEKAR,
   S/O LATE C V ASHWANARAYANA SHETTY,
   AGED ABOUT 52 YEARS,
   ADVOCATE,
   NO.U-50, 5/1, PIPELINE, 6TH CROSS,
   DATTATHREYA TEMPLE STREET,
   MALLESHWARAM, BENGALURU – 560 003.

…PETITIONERS

(BY SRI.DIWAKAR K., SENIOR COUNSEL A/W
SRI.N RAVINDRANATH KAMATH.,PARTY IN PERSON AND
SRI. S N RAMAPRASAD., ADVOCATE)

AND:

SRI SUBRAMANYESHWARA CO-OPERATIVE
BANK LIMITED
(A BANK REGISTERED UNDER CO-OPERATIVE
SOCITIES REGISTRATION ACT,1959,

RAJATHA BHAVAN,NO.106, R V ROAD,
V V PURAM, BANGALORE-560 004.
REP BY ITS AUTHORIZED OFFICER,
MR.B.R NAGARAJA.

...RESPONDENT

(BY SMT.LAKSHMY IYENGAR., SENIOR COUNSEL A/W
SRI.K S VENKATARAMANA.,ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 29.12.2022 IN CRL.MISC.NO.454/2021 ON THE FILE OF VIII A.C.M.M BANGALORE DATED 29.12.2022 VIDE ANNEXURE-A AND ETC.,

THESE PETITIONS COMING ON FOR FURTHER HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The tone for this judgment may be set by quoting what **Richard Brinsley Sheridan**, an acclaimed Irish dramatist of 18th century, on being asked by his tailor for the payment of at least the interest on his bill amount, had retorted:

> *"**It is not my interest to pay the principal, nor my principle to pay the interest**".*

2. In these Petitions, Petitioner a designated Senior Advocate being a chronic loan defaulter of the 1st Respondent – Cooperative Bank is knocking at the doors of Writ Court for assailing the coercive loan recovery

proceedings instituted under the provisions of SARFAESI Act, 2002 on the ground that the due procedure established under law has not been followed. Learned Sr. Advocate appearing for the Petitioner argues that his client was not given the reprieve admissible on account of Covid -19 Pandemic and that he had no fair deal at the hands of the lender – Bank. Having so argued, he lastly said that should a period of three months be granted, entire loan amount would be cleared by recourse to 'taking over' or the like.

3. After service of notice, Respondents have entered appearance through their Panel Advocate and filed the Statement of Objections resisting the Writ Petitions. Learned Sr. Advocate appearing for the Bank makes vehement submission in justification of the subject coercive proceedings of loan recovery. She points out that the Petitioner had borrowed a huge sum of Rs. 1.50 Crore way back in February, 2017 agreeing to repay the same in 120 equivalized monthly installments each of

Rs.2,37,431/-. The rate of interest is 14.50% per annum with monthly rests. The said loan account was branded as NPA on 02.07.2017 i.e., within five months of availment, Petitioner proving to be a loan defaulter; she also draws attention of the Court to the letters dated 19.12.2020 & 04.07.2020 wherein the Petitioner having acknowledged the debt, had sought for extension of time for regularizing the loan account; however, the same came to be rejected. Turning pages of several interim orders, counsel reads out the conditions subject to which reprieve was granted and complains that these conditions have remained repeatedly unfulfilled. She hastens to add that the Petitioner does not have any respect for the court orders and that the Cheque given by him assuring its encashment on presentation, has bounced, despite he having been warned of possible contempt action should that happen. So contending, she seeks dismissal of the Writ Petitions.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this Court declines indulgence in the matter for the following reasons:

(a) The structure of banking in India comprises several categories of banks. Amongst these, the Cooperative Banks are registered as Cooperative Societies under the provisions of either the State Cooperative Societies Act(s) or the Multi-State Cooperative Societies Act, 2002. Respondent – Bank is registered under provisions of Karnataka Co-operative Societies Act, 1959. This Court takes judicial notice of the fact that in the recent past, several cooperative banks in the country have committed legal suicide owing to mindless lending coupled with culpable failure to recover the outstanding debts. This Court cannot leave it unsaid that a serious problem of cooperative credit is the overdue loans of the cooperative banks which have been continuously proliferating over the years. Large amounts of overdues restrict the recycling of funds and thereby, adversely affect the lending & borrowing capacity of the cooperative institutions. In fact, two statutory committees, viz., the Narasimham Committee and The Madhav Rao Committee had suggested stringent remedial actions in this regard. All

this needs to be briefly adverted to because, the first Respondent also happens to be a cooperative banking institution and therefore, it has to take all measures as are necessary for recovering the outstanding loans, speedily if not on a warfooting.

(b) The availment of loan is not in dispute; the amount specified as outstanding, is also not much in dispute; the subject property has been bought by the Petitioner from the loan amount in question. The Bank in all fairness agrees that the Petitioner on being served with a spate of notices, has repaid only a sum of Rs.62,42,183/- that too as on 06.07.2020. However, that is not the end of matter since a gigantic sum of money still remains unpaid. The repayment of subject loan is secured by the mortgage of this property. When the loan remains unpaid despite notices, and the borrower continues recalcitrantly to be a defaulter, such loan account is endorsed as NPA; this happened to Petitioner's loan account way back in 2017 itself. The Banks deal with

public money and therefore, they are subject to the doctrine of public trust. Banks and Financial Institutions are bound to take coercive action for the speedy recovery of outstanding loans. Even judicial intervention for such recovery is now statutorily minimized and banks themselves do it on their own. The 2002 Act is made *inter alia* with that object in mind. Cooperative Banks are brought within the beneficial fold of this Act vide Apex Court decision in PANDURANGA GANAPATI CHAUGULE vs. VISHWSARAO PATIL MURUGUD SAHAKARI BANK LTD., (2020) 9 SCC 215. Therefore, the coercive proceedings of loan recovery inevitably taken up by the Respondent-Bank under the provisions of the Act, cannot be faltered, no breach therein having been demonstrated.

(c) Learned Sr. Advocate appearing for the Petitioner submits that his client has filed two money suits: one is against Dr. P Dayanand Pai for recovering a sum of Rs.15,50,000/- with 12% interest per annum; this suit is filed in April, 2021. Another suit is stated is filed

in July, 2021 against one Mr. V Lakshminarayana, for recovering a sum of Rs.7,56,76,000/- with 9% interest per annum; the registration numbers of both the suits are not forthcoming, although copies of their plaints are produced as annexures to Petitioner's Application in IA No.6/2021 filed on 05.09.2021. This stand of defaulting debtor, metaphorically speaking is like showing money in the mirror. At para 3 of his pleadings in W.P.No.3791/2021, he avers:

> *"… the petitioner promised that due to recession, he is unable to pay monthly installments but will pay the full dues as and when he receives money from his clients; the Petitioner was expecting huge fees from his certain clients; when the clients did not pay Petitioner was making arrangement to sell certain of his properties in Kodagu which did not happen due to sudden slash in Real Estate Market."*

That was way back in 2019-20. In his letter dated 04.07.2020 petitioner had assured the Bank that:

> *"… I am planning to regularize the Accounts within three months… therefore, I request you to defer all actions which you intend to take as per law against me and accommodate me and grant me time till 15.10.2020 and oblige.(sic)"*

In his subsequent letter dated 19.12.2020, pleading financial difficulty he had told the Respondent – Bank: *"… I need two years time to regularize my loan and if possible clear the loan to your Bank…".* Years have rolled since then and only a pittance has been done. **Solemn words have not been kept** and there is no plausible explanation for the same.

(d) Petitioner's Law Chamber has been established in the subject property, as the very petition averment goes. Admittedly Petitioner owns properties in Kodagu and despite that, no concrete steps have been taken to dispose off the same within a reasonable period so that the subject loan could be repaid. Left with no option, the Bank initiated coercive recovery proceedings. That has given rise to these two Petitions. A Co-ordinate Bench of this Court vide order dated 23.02.2021 made in W.P.No.3791/2021 had said as under:

> *"Issue notice.*
>
> *Sri Ravishankar, learned advocate for petitioner submits that petitioner has to pay*

Rs.25 lakhs as EMI to regularize loan. Petitioner undertakes to pay the same, in due course".

This amount was not paid. The said learned Judge on 26.02.2021 made another order which reads as under:

"Shri D.R.Ravishankar, learned Advocate for petitioner submits that an Affidavit of undertaking will be filed stating that a sum of Rs.25 lakhs will be deposited on or before 15.03.2021 and the entire installments shall be paid on or before 30.04.2021.

Interim order as prayed, subject to deposit of Rs.25 lakhs and filing Affidavit of undertaking". (sic)

Even then amount was not paid.

(e) Another Co-ordinate Bench quoting the above order *on* 09.03.2023 *inter alia* had said as under:

"…The learned Senior counsel would submit that the aforesaid order also been violated, as Rs.25,00,000/- has not been deposited on or before 15.03.2021 and the entire installments as undertaken is not paid before 30.04.2021.(sic)

The interim order was subject to deposit of the aforesaid amounts. In the light of the said undertaking given by the learned counsel then, at the time of the grant of interim order and its breach, I grant one week time to the petitioner to comply with order 26.02.2021 and also indicate a timeline with which the entire installment would be paid to the Bank, failing

which, the interim order would stand automatically vacated…

Tag this petition along with W.P.No.1/2023

List this matter on 17.03.2023."

Even this order was not complied with. However, again time was gracefully granted. On 17.03.2023, the said Bench after reproducing the earlier orders, had administered the warning of dismissal of petition, with the following observations:

> *"…Learned counsel representing the petitioners today submits that the amount as ordered on 09.03.2023 would be paid on or before 28.03.2023, and the learned counsel undertakes in the event the amount is not paid to the Bank on or before 28.03.2023, the petition may be dismissed. The said submission is placed on record.*
>
> *Interim order granted earlier in W.P.No.1/2023 is extended till the next date of hearing.*
>
> *List these matters on 29.03.2023 in the fresh matters list."*

Despite threat of dismissal of the Writ Petitions, should he fail to make the payment as undertaken, **Petitioner did not pay even a rupee.** The Co-ordinate Bench vide order

dated 17.03.2023 ultimately granted some more time i.e., till 28.03.2023 to make the payment; in fact, petitioner himself had undertaken that the petition be dismissed should he fail to make the payment and that is also recorded in the order sheet. Habitually, **Petitioner did not make payment** in terms of this order too.

(f) Another Co-ordinate Bench vide order dated 29.03.2023, vacated the interim protection since the condition of payment stipulated for enjoying the reprieve was not complied with, despite giving repeated adjournments and warnings. The said order has the following script:

> *"Heard the learned Senior counsel, Sri. D.R. Ravishankar, appearing for the petitioners and Smt. Lakshmi Iyengar, learned Senior counsel appearing for the respondents.*
>
> *This Court on 17.03.2023 had observed that if the amount is not paid to the Bank as undertaken, the petition itself would be dismissed.*
>
> *Learned Senior counsel, Sri. D.R. Ravishankar seeks indulgence for a period of two weeks.*

> *Therefore, owing to the submissions made by the learned Senior counsel, Sri. D.R. Ravishankar as observed, the writ petition is not dismissed, but the interim order stands vacated reserving liberty to the petitioner to seek its restoration on making payment to the Bank."*

On 18.04.2023, the Co-ordinate Bench had shown leniency to the petitioner so that he would make payment and can make use of the office located in the security property. This order reads as under:

> *"Heard the petitioner-in-person Sri.N.Ravindranath Kamath and learned Senior counsel Smt.Lakshmi Iyengar, appearing for the respondents.*
>
> *In terms of the earlier orders, in partial compliance thereof, the petitioner has paid Rs.21,00,000/- (Rupees Twenty One lakhs only) as on date and would undertake before this Court that he would pay Rs.70,00,000/- (Rupees Seventy Lakhs only) on or before 30.06.2023.*
>
> *In the event, the petitioner would not pay the said amount on or before 30.06.2023, the Bank is at liberty to take possession of the property and deal within the manner known to law. The petitioner then cannot claim equity before this Court and no indulgence would be shown if there is default of the aforesaid payment. Till such time, the petitioner shall be permitted permissive possession as is now provided by the Bank for the use of his office,*

the same is subject to payment on or before 30.06.2023.

List these matters on 04.07.2023."

(g) Despite a slew of orders as mentioned above, Petitioner still remained non-compliant by telling one or the other story. On 10.07.2023, having argued the matter for some time, petitioner filed an affidavit and this court *inter alia* observed as under:

"…Petitioner having argued the matter for some time, has filed an affidavit dated 10.07.2023 which reads as under:

"I, N. Ravindranath Kamath S/o late of Venkatesh Kamath aged 52 years, No. 201, 202, 2nd floor, HVS Court, No 21 Cunningham Road 52 on Solemn affirmation make oath and State as follows:-

1. I make oath and state that I am the Petitioner herein, as per my undertaking before this Hon'ble Court dated 26-2-2021. I am swearing this Affidavit.

2. I submit that a sum of Rs. 25,00,000 (Twenty Five lakhs Only) I undertake to pay to 1st respondent bank on or before 15-3-2021.

3. I also submit that after arriving to the total installment due amount payable by me to 1st respondent towards the balance installment amount I shall clear on or before 30-04-2021.

4. I further submit that it is my endeavour to clear the loan pending to 1st respondent bank,

however due to present Covid 19 pandemic my income being considerably reduced I am put into difficulty. I am also making efforts to dispose of my other properties for an expedited closure of the loan account.

5. I further state that after payment of my EMI dues within the time that may be permitted by this Hon'ble Court; I will pay and continue to pay the installments regularly.

6. I further state that I making my best endeavour, to comply with all my undertakings to the best of my ability.

I swear in the name of god that this is my name and signature and contents of this Affidavit is true and correct."

2. The second half of para 3 in the affidavit having been objected to by the learned Sr. Advocate for the bank, the petitioner, a Sr. Advocate arguing in person has struck off four & half lines which begin with the word 'this' and end with the word 'dated 08.06.2023'.

3. Petitioner is put to warning that in the event he fails to abide by the undertaking given in the form of affidavit, not only the bank will take coercive action by taking permissive occupation of the property if need be with force and breach of undertaking may also amount to contempt of this court.

Call this matter on 27.07.2023 before the Roster Bench".

Even then, no amount was paid.

(h) These cases were posted for consideration again on 27.07.2023. Petitioner had exhibited a bank cheque dated 02.08.2023 for a sum of Rs.70,00,000/- (Rupees seventy lakh) only payable to the respondent-bank. This Court *inter alia* observed as under:

> *"The petitioner-party in person has held the Bank cheque dated 02.08.2023 for a sum of Rs.70,00,000/- (Rupees Seventy Lakhs) only drawn in favour of respondent No.1-Bank repeatedly assuring that on presentation, the cheque shall be honoured. When the Court warned him that if that is not honoured, the act may amount to contempt of the Court, the petitioner who happens to be the Senior advocate readily agreed to the same.*
>
> *In view of the above, call this matter on 7th August, 2023 for further hearing.*
>
> *Interim order granted earlier to continue till the next date of hearing".*

This order recorded repeated assertion of the Petitioner in person that the said cheque shall be honoured immediately on presentation to the bank. **He had even agreed to the warning of this court that the dishonor of cheque would amount to contempt of court.**

(i) Therefore, believing the above words of Petitioner, this court extended the interim protection. However, as usually & habitually, Petitioner remained non-compliant. The subject cheque was dishonoured because of "Stop payment instruction" issued by its drawer namely Sri Mahavishnu Co-operative Society, which had addressed a letter dated 05.08.2023 to the respondent-bank as under:.

> *"…*
> *Respected Sir/Madam,*
>
> *Subject: Clarification on Loan Amount of 4Cr- Documents Pending*
>
> *We are waiting of the reports on due diligence on Revenue Documents- Tracing Mother Deed, Updated Property Tax Payments, Khata Certificate, Khata Extract, Verify the Legal Documents Provided, Clearance on Legal Opinion.*
> *We are waiting for the Updated documents from Mr.Ravindranath Kamath.*
> *We are yet to make a Payment due to pending on Due-Diligence to the Cheque Issued by Us.*
> *We are stopped the payment Rs.70,00,000 for analysis on Audit Reports of the Client and Also Effect on GST Rs.12,00,000 towards the Loan Amount.*
> *We are Releasing the Loan Amount Subject the Clearance of the Said above within 45 working days."*

The assertion of learned Sr. Advocate appearing for the respondent-bank that the Petitioner has been a chronic defaulter and that he cannot be trusted, has been substantiated.

(j) On 07.08.2023, Petitioner moved an application supported by his affidavit. Para 5 of the application and the prayer made therein read as under:

> *"It is submitted that this Hon'ble Court on 04.07.2023 given time upto 26.07.2023 to the petitioner to deposit the said sum amount of Rs.70,00,000/-. The petitioner made efforts to complete the sale transaction of his Coffee Estate. Survey of Coffee Estate had to be conducted before execution of the Sale Deed. In view of heavy rain in Kodagu, the survey of the property is postponed. Therefore, the petitioner has approached Shri Mahavishnu vividuddesha Multi-purpose Co-operative Society Ltd (R) for takeover of the entire loan with the Respondent-Bank. The takeover process is in progress. On 26.07.2023, the said society handed over the Cheque of Rs.70,00,000/- on behalf of Petitioner to Respondent No.1-Bank. The said Cheque was dated 02.08.2023. It is submitted the said Shri Mahavishnu Vividuddesha Multi-Purpose Co-operative Society Ltd (R) was advised by its Auditors that if the Cheque for Rs.70,00,000/- were to be realized, it will effect GST of Rs.12,00,000/- on loan amount and the 1st petitioner has to pay Income Tax, since*

> *approval is in the process and not completed. The Co-operative Bank cannot pay any amount without approval of the loan, which fact the Managing Director of the Bank, Sri Krishnam Raju was not aware at the time of issuing of Cheque in favour of 1st respondent which was handed over before this Hon'ble Court. Necessary affidavit is filed now by said Sri Krishnam Raju with documents, the loan will be sanctioned and a loan of 1st Petitioner to the 1st Respondent-Bank will be cleared by taking over of the loan within 60 working days. The whole process of taking over of loan consumes time in view of due diligence of process requires to be completed. Therefore, time granted by this Hon'ble Court may be extended for a period of 60 days from today, in the interest of justice and equity. The petitioner's loan closed if the extension of time is granted by this Hon'ble Court."sic.*

Learned Sr. Advocate appearing for the respondent-bank is justified in contending that the credentials of petitioner as reflected from the record of these proceedings, demonstrate his **untrustworthiness.**

(k) Petitioner has been playing all tactics to delay, if not defeat the claim of Bank. It is not that this is the only property which the petitioner owns; as already mentioned above. Admittedly, he owns properties in Coorg too. He had told the Bank way back in 2019-2020 that he would

sell these properties and pay off the outstanding debts. These words, he did not keep up with the excuse of intervening COVID-19 pandemic. Gone are those days now and still he has not *prima facie* demonstrated the endeavors made for disposing off the said properties. A lender cannot lend his ears for cock & bull stories of the borrower, endlessly. A writ court cannot grant indulgence to an unscrupulous litigant who does not keep up his words given repeatedly. A borrower is a borrower, whether he is a practising lawyer or a sitting Judge. Loan laws do not provide for favourable treatment to them differential *qua* other borrowers, when they become chronic defaulters. An argument to the contrary offends equality/parity in matters of loan recovery and therefore, cannot be countenanced. Showing any more indulgence in favour of the Petitioner would give scope for public criticism that courts are favouring the unscrupulous borrowers only because they happen to be in the legal fraternity.

In the above circumstances, this writ petition being devoid of merits is liable to be dismissed and accordingly it is, costs having been reluctantly made easy.

It is open to the respondent-bank to proceed with the coercive recovery process in accordance with law without brooking any more delay.

Sd/-
JUDGE

Cbc/Snb/Bsv
List No.: 1 Sl No.: 72