IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

WA NO. 391 OF 2022

AGAINST THE JUDGMENT DATED 11.3.2022 IN WP(C) NO.5078 OF 2022 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 & 2 IN THE WPC:

1 THE FEDERAL BANK LTD.
QUILANDY BRANCH, REPRESENTED BY ITS BRANCH MANAGER,
PANTHALAYANI AMSOM DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT 673 632.

2 THE ZONAL MANAGER
FEDERAL BANK LIMITED, ZONAL OFFICE, ARAYIDATH
PALAM, KOZHIKODE 673 004.

BY ADVS.
MOHAN JACOB GEORGE
P.V.PARVATHY (P-41)
REENA THOMAS
NIGI GEORGE

RESPONDENT/PETITIONER IN THE WPC:

N.K.ANITHA
AGED 50 YEARS, W/O. RAJAN, NANAMKANDI PARAMBIL
HOUSE, KARAYAAAATHANKAVU P.O, VIA BALUSSERY,
KOZHIKODE 673 632

BY ADVS.
SANTHAN V.NAIR
AISWARYA AJAYAGHOSH(K/4339/2024)
RIYA KOCHUMMAN(K/003416/2023)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 7th day of April, 2025

Nitin Jamdar, C.J.

Heard Mr. Mohan Jacob George, learned counsel for the Appellants and Adv. Ms. Arathy R. representing Mr. Santhan V. Nair, learned counsel for the Respondent/Original Petitioner.

2. The Appellant before us is a Bank and the Respondent/Original Petitioner is the borrower. The Appellant Bank had filed proceedings in Original Suit No.128 of 2009 in respect of the recovery of loan from the Respondent/Original Petitioner. The proceedings culminated in favour of the Appellant Bank. The Respondent/Original Petitioner filed O.P. (C)No.144 of 2022 and thereafter filed W.P.(C)No.5078 of 2022 for a writ of mandamus directing the Bank to consider and pass appropriate orders on the representation made in respect of the settlement offered by the Respondent/Original Petitioner. The learned Single Judge by the impugned judgment dated 11 March 2022, issued a writ of mandamus and directed the Appellant Bank to consider the representation and strive to arrive at an amicable settlement resorting to conciliation or mutual negotiation. This judgment is the subject matter of the present appeal.

3. The Division Bench, while issuing notice by order dated 24 March 2022, observed thus:

> *"Being aggrieved by the judgment in W. P. (C) No. 5078 of 2022 dated 11.03.2022, directing the Zonal Manager, Federal Bank Ltd., Kozhikode, the 2nd appellant, to consider*

Ext.P3 representation submitted by the writ petitioner, and to arrive at an amicable settlement in the matter resorting to conciliation or mutual negotiation, instant writ appeal is filed on various grounds inter alia maintainability of the writ petition, forum shopping and suppression of facts.

2. That apart, attention of this Court was also invited to the counter affidavit dated 18.02.2022 filed by the Bank, wherein specific averments have been made to the effect that Ext. P3 representation of the writ petitioner has already been rejected by the Bank on 14.02.2022. Before the writ court, copy of the order of rejection Ext. R1(j), has also been filed.

3. For brevity, paragraph No. 7 of the counter affidavit dated 18.02.2022 filed by the Bank is reproduced:-

> *"7. The Petitioner has suppressed all the above facts before this Hon'ble Court. It is also submitted that an amount of Rs.28,04,114/- (Rupees Twenty Eight Lakhs Four Thousand Hundred and Fourteen Only) is due under the aforesaid decree from the Petitioner excluding the cost of stamp paper, registration charge, expenses etc involved. Ext. P-3 was rejected by the Respondent on 14.02.2022. Copy of the letter dated 14.02.2022 rejecting Ext.P-3 submitted by the Petitioner is produced as Ext.R1(j)."*

4. According to Mr. Mohan Jacob George, learned counsel for the Bank, despite the objections with reference to maintainability and other issues, writ court ordered to consider Ext. P3 representation, which has already been rejected on 14.02.2022 itself.

5. Issue notice to the respondent by speed post, returnable in 10 days.

Bank is directed to maintain status quo."

4. The order of status quo granted by the Division Bench continues till today. As indicated by the Division Bench in the order dated 24 March 2022, such a writ of mandamus directing the Bank to decide the matter by negotiation will be contrary to the decision of the Hon'ble Supreme Court,

the review of which is taken in the decision of the Division Bench of this Court in the case of *State Bank of India, Tvm. v. Sham P.S.*[1] Going by the decision and the law laid down by the Hon'ble Supreme Court referred to in the above decision, according to us, such a mandatory direction could not have been issued. It is for the Bank and the borrower to decide whether they need to settle the matter through negotiation.

5. The appeal is accordingly allowed. The impugned judgment dated 11 March 2022 in W.P.(C)No.5078 of 2022 is quashed and set aside.

Sd/-
Nitin Jamdar
Chief Justice

Sd/-
S. Manu
Judge

vpv

1 2025 (1) KHC 81