

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Monday, the 3rd day of August 2020/12th Sravana, 1942

WP(C) No.9400/2020(S)

**THE COURT ON ITS OWN MOTION:
SUO MOTU PROCEEDINGS- COVID -19-PANDEMIC.**

RESPONDENT

**THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

This Suo motu writ petition again coming on for orders upon perusing the petition and this Court's order dated 30/06/2020 and upon hearing the arguments of SRI.P. VIJAYAKUMAR, ASSISTANT SOLICITOR GENERAL OF INDIA, SRI.RANJITH THAMPAN, ADDL. ADVOCATE GENERAL & SRI.SUMAN CHAKRAVARTHY, SENIOR GOVERNMENT PLEADER, the court passed the following:

P.T.O.

rs.

**S. MANIKUMAR, CJ,
C.T. RAVIKUMAR, J.
&
SHAJI P. CHALY, J.**

W.P.(C)No.9400 OF 2020 (Suo Motu)

Dated this the 3rd day of August, 2020

ORDER

S.MANIKUMAR, C.J.

Having regard to the fact that the lockdown resulted in immobilisation of public at large and total stoppage of public transport, it was brought to the notice of this court that the litigants are finding it difficult to approach the courts to vindicate their grievances. Therefore, the suo motu writ petition was registered.

2. On 18th May, 2020, after hearing Mr. Ranjith Thampan, learned Additional Advocate General, Mr. Suvin R. Menon, learned Central Government Counsel, Mr. R. Lakshmi Narayan on behalf of the Kerala High Court Advocates' Association and Mr. Suman Chakravarthy, learned Senior Government Pleader, at paragraph Nos.5 and 6, a Full Bench of this Court passed the following order in the suo motu W.P.(C)No.9400 of 2020:

“5. Insofar as recovery proceedings under State Laws are concerned, taking note of the submissions of Mr. Ranjith Thampan, learned Additional Advocate General, Government of Kerala, on 25.3.2020 at paragraph No.6, we recorded the submission as hereunder:

“6. In so far as recovery proceedings under the State Laws are concerned, Shri Ranjith Thampan, learned Additional Advocate General submitted that, in all recovery matters,

such as electricity, water, Abkari and other matters, Council of Ministers, Government of Kerala has already taken a decision that payment will be deferred upto 30.04.2020, and therefore, no recovery proceedings would be initiated or recovery proceedings already initiated, would not be proceeded further until 30.04.2020. The submission of the learned Additional Advocate General is placed on record.”

Thereafter, at paragraph 23, we passed the following order:

“23. Shri Ranjith Thampan, learned Additional Advocate General also submitted that, in so far as Local Self Government Institutions are concerned, Government have issued instructions not to take any coercive action. It is sincerely expected that, due to the outbreak of COVID-19, State Government, LSG Institutions, Government of India, and Public Sector Undertakings owned and controlled by the State/Central Governments that no coercive action be taken since there is no opportunity to the persons to approach the Courts at present.”

6. Having regard to the continuous pandemic situation, and also the limited staff employed in different institutions and lack of transport facilities difficulties continue to subsist and, therefore, in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India, we hereby direct that the State Government, LSG Institutions, Government of India and Public Sector Undertakings owned and controlled by the State/Central Governments, that no coercive action be taken till 30.6.2020. However, liberty is given to the State Government/LSG Institutions, Government of India and others stated

supra, to approach this Court, seeking necessary permission for initiating/proceeding with recovery proceedings.”

4. On 25.3.2020, taking note of the order of the Hon'ble Supreme Court in the Special Leave Petition (Civil) Diary No.10669/2020 dated 20.3.2020, this Court ordered thus:

“8. In so far as recovery proceedings by the Government of India and Public Sector Undertakings owned or controlled by the Government of India, attention was invited to an order of this Court passed in W.P. (C)No.8231 of 2020 dated 19.03.2020, which was taken on appeal by the Union of India in Special Leave Petition (Civil) Diary Nos.10669/2020 wherein, the Hon'ble Supreme Court of India on 20.03.2020 has passed the following orders:

“The Registry is directed to accept these special leave petitions against the judgment and order(s) passed by the High Court of Judicature at Kerala, Ernakulam Bench in Writ Petition (Civil) No.8231/2020 and of the High Court of Judicature at Allahabad, Allahabad Bench in Writ Petition (Civil) No.7014/2020.

Permission to file special leave petitions is granted.

Issue notice.

In the meantime, there shall be ex-parte ad-interim stay of the impugned judgment and order(s) passed in the aforesaid writ petitions and of further proceedings before the High Court(s), in view of the stand taken by the Government of India through learned Solicitor General, before us, that the Government is fully conscious of the prevailing situation and would itself evolve a proper mechanism to assuage concerns and hardships of every one.”

9. The learned Assistant Solicitor General of India submitted that the order of the Hon'ble Supreme Court dated 20.03.2020 would

implicitly be adhered to by Government of India and above-said Public Sector Undertakings.

10. Taking note of the submission of the Government of India before the Hon'ble Supreme Court that a proper mechanism will be evolved, in exercise of the powers under Articles 226 and 227 of the Constitution of India, we also deem it fit to state that until such time, we hope that no action would be taken.”

5. COVID 19 pandemic situation continues and even at this point of time also, it cannot be said that the litigants are free so as to enable them to approach the courts/Tribunals for vindicating their grievances against any coercive/recovery action, taken by the institutions, referred to in our earlier orders.

6. However, State Bank of India, Thiruvananthapuram has filed I.A.Nos.1 and 2 of 2020. I.A.1 of 2020 has been filed with a prayer to implead the State Bank of India as an additional respondent in the suo motu proceedings. I.A.No.2 of 2020 is filed with a prayer to clarify that the State Bank of India can continue with the recovery proceedings under the SARFAESI Act, 2002, which were already initiated, with respect to loan accounts which were classified as non-performing asset, much before the outbreak of COVID 19 pandemic situation. Averments made in support of the above interlocutory applications are as follows:

“4. It is submitted that the Reserve Bank of India, on 27-3-2020, has issued a circular, declaring the Covid-19 regulatory package, by directing the bank to re-schedule the payments of all existing

credit/loans. The Reserve Bank of India has later issued another circular on 23-5-2020, clarifying the above-mentioned circular. The true copy of circular dated 27-3-2020 is produced and marked as Annexure-A1 and true copy of the circular dated 23-5-2020 is produced and marked as Annexure-A2. The aforementioned two circulars issued by the Reserve Bank of India reflects the policy of the Government of India, not to put on-hold the recovery proceedings, which has already been initiated by the Bank. That apart, the aforementioned two circulars issued by the Reserve Bank of India will come within the ambit of a subordinate-legislation by virtue of Section 35-A of the Banking Regulation Act, 1949. The Government of India has not issued any other orders or instructions in the matter to the Banks.

5. As this Hon'ble Court has passed interim orders in the aforementioned case on 25-3-2020, which is being extended from time to time, the banks are not in a position to proceed with the recovery proceedings, with respect to the loan accounts, which were classified as Non-Performing Assets, much before Covid-19 pandemic situation, even though the aggrieved parties have not even approached any judicial forums challenging the proceedings. As on today, it is estimated that the amount to be recovered by the State Bank of India, Stressed Assets Recovery Branch at Thiruvananthapuram, alone comes to nearly 300 crores, with respect to accounts classified as N.P.A. before the Covid-19 pandemic. If the amounts to be recovered by the State Bank, with respect to accounts classified as N.P.A. within the State of Kerala is taken, it would come

to huge amounts. Now, by virtue of the interim orders of this Hon'ble Court, the recovery of public money is locked, thereby the availability of funds for re-lending to the deserving people, for boosting the economic growth of the country is at peril. Thus, the interest of the bank also is being prejudiced.”

7. In addition to the supporting averments, Annexure A1 dated 27th March 2020 and Annexure A2 dated 23rd May 2020 circulars issued by the Reserve Bank of India are enclosed. Inviting our attention to the judgment of the Hon'ble Supreme Court in *ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited and others* reported in (2010) 10 SCC 1, Mr. Jawahar Jose, learned counsel for the State Bank of India, submitted that the circulars issued by the Reserve Bank of India would fall within the ambit of a subordinate legislation by virtue of Section 35 A of the Banking Regulation Act, 1949 and that the Government of India have not issued any other orders or instructions in this regard to the Banks.

8. The Canara Bank, Ernakulam has also filed I.A.No.3 of 2020 seeking to implead them as an additional respondent in the writ petition. Bank has also filed I.A.No.4 of 2020 seeking for a direction to permit the additional 2nd respondent to proceed with the recovery steps with respect to the account of the defaulters stated therein. In the affidavit filed in support of these I.As., the following averments are made:

“5. Only with respect to certain accounts as narrated below, this additional second respondent seeks permission of this Hon'ble court to proceed with the recovery proceedings. These accounts have already been categorized as a non-performing asset (NPA) before lockdown Phase 1 declared by the Central Government (25.3.2020).

Sl. No.	Account No.	Name of the defaulter	Outstanding liability as on 13.7.2020	Date of NPA
1	1.3539261000093 2. 3539773000014 3. 3539773000018 4. 3539773000016	M/S Khyr Fashion	6288362.86	20.1.2018
2	0807101093812 0807603022694 0807619022466	Kiran.P.P.	63095952.69	16.10.2017
3	6271662000001	Mohammed Iqbal	16313940.74	28.9.2018
4	3539261000089	M/S Saraswathi Engineering	11557241.96	30.6.2017
5	1859603020085 1859605019759 1859605019760 1859662000004 1859662000005	Vinayan S G	33846019.53	15.11.2017
6	3475261000001 3475773000001	V S Textiles	31357652.07	8.7.2014
7	0801768000181	Chellakkara Central School	20253000.04	1.12.2016
8	0821775000001	Venugopalan Nair	10918915.88	5.3.2018
9	0804261007302 0804261007306	Mirza Vessels and Lalitha Ayurvedic	55047470.34	31.3.2015 29.9.2015

6. The recovery of the aforesaid accounts is pending sale of the secured property. Though, sale proceedings had been initiated before 25.3.2020, there were no successful bidders at that time and the sale proceedings had failed. Now prospective bidders have approached the

additional second respondent Bank, who are interested in buying the said properties. Without prior permission from this Hon'ble court as stated in the order dated 18.5.2020, this additional respondent cannot proceed with the sale of the secured property of the aforesaid defaulters.

7. The additional second respondent is confident that if the sale proceeding/recovery proceeding is permitted to be carried out, this respondent can recover its outstanding amounts. This might be the only chance for the additional second respondent to recover the aforesaid sums. Since the accounts of the defaulters has already been categorized as NPA, no prejudice will be caused to them.”

9. Mr.Ranjith Thampan, learned Additional Advocate General, submitted that on the aspect that the Government of India have not issued any directions in this regard, with specific reference to the order of the Hon'ble Supreme Court in SLP (C)Diary No.10669/2020 and if banks are permitted to take coercive recovery measures under the provisions of the SARFAESI Act, 2002 then, other lending institutions in the co-operative sector, which may fall under the definition of financial institutions, Debt Recovery laws may also approach this Court, for permission to initiate proceedings for recovery, or for continuation of the same. In such circumstances, learned Additional Advocate General seeks time to get further instructions from the State Government.

10. Learned Central Government Counsel also seeks time to get instructions in this regard.

11. Specific instructions are required with reference to what is stated in paragraph (9) above, particularly, the order of the Hon'ble Supreme Court, from both the Central and State Governments, on the aspect of initiation/continuation of recovery proceedings against defaulters. The number of COVID cases are increasing. Situation has not changed in Kerala. Therefore, keeping in mind the prevailing situation of COVID 19 pandemic, lockdown. is extended by the Central Government upto 31.08.2020.

12. In view of the above, interim order dated 25.3.2020 is extended until further orders.

Post on 07.09.2020.

Sd/-

**S.MANIKUMAR,
CHIEF JUSTICE**


Sd/-

C.T.RAVIKUMAR, JUDGE

Sd/-

SHAJI.P.CHALY, JUDGE

-TRUE COPY-


ASSISTANT REGISTRAR

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ANNEXURE A1: TRUE COPY OF THE CIRCULAR DATED 27/03/2020 ISSUED BY THE RESERVE BANK OF INDIA.

ANNEXURE A2: TRUE COPY OF THE CIRCULAR DATED 23/05/2020 ISSUED BY THE RESERVE BANK OF INDIA.