

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL)..... Diary No(s).2527/2024

(Arising out of impugned final judgment and order dated 11-07-2023 in WA No.1214/2023 passed by the High Court of Kerala At Ernakulam)

SALIM VAILLISSERY

Petitioner(s)

VERSUS

THE AUTHORIZED OFFICER, HDFC LTD. & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.24501/2024-CONDONATION OF DELAY IN FILING)

Date : 16-02-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE K.V. VISWANATHANFor Petitioner(s) Ms. Samriti Ahuja, Adv.
Mr. Lakshmeesh S. Kamath, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.
2. Heard learned counsel for the petitioner and perused the record.
3. The grievance of the petitioner is against the judgment dated 11.07.2023 passed by a Division Bench of the High Court of Kerala, upholding the view taken by the learned Single Judge, whereby the writ petition filed by the petitioner was not entertained. He was relegated to approach the alternative remedy in accordance with the law, namely, the Debt Recovery Tribunal. The petitioner availed four loans from the respondent-Bank. It is his case that without

serving the statutory notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "Act"), an order under Section 14 of the Act was secured and forcible possession of the mortgaged property has been taken. It may be true that where the action taken is *ex-facie* violative of the statutory mandate, the High Court can entertain a writ petition without relegating the aggrieved person to avail the alternative remedy. However, the existence of power is one thing, and the exercise thereof is altogether different.

4. It goes without saying that the High Court will invoke its writ jurisdiction sparingly and only in compelling circumstances.

5. Be that as it may, no useful purpose shall be served by relegating the petitioner to the writ jurisdiction of the High Court as the petitioner can raise all the contentions before the Debt Recovery Tribunal, including the failure of the respondent-Bank to serve statutory notices on him.

6. Consequently, we decline to interfere with the impugned judgment of the High Court, giving the petitioner liberty to approach the Debt Recovery Tribunal and raise all the contentions. The Tribunal shall be obligated to consider the issue of whether requisite statutory notice was served upon the petitioner before taking physical possession of the mortgaged property.

7. The petitioner's prayer for interim relief shall also be considered by the Tribunal and an appropriate order shall be passed within two weeks after filing of the petition.

8. With these observations and liberty, the special leave

petition is disposed of.

9. All pending applications, if any, also stand disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(PREETHI T.C.)
COURT MASTER (NSH)