

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP(C).No. 218 of 2011 (O)

AGAINST THE ORDER IN RP.NO.453/2003 OF THE KERALA CO-OPERATIVE
TRIBUNAL, THIRUVANANTHAPURAM. DATED 28-05-2010

PETITIONER:

THE SECRETARY, PERINTHALMANNA TALUK,
RURAL HOUSING CO-OPERATIVE SOCIETY, LTD.NO.M.270
PERINTHALMANNA, MALAPPURAM DISTRICT, PIN-679 322.

BY ADV. SRI.C.D.DILEEP

RESPONDENTS:

1. THE KERALA CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURAM, PIN-695 001.
2. AMINA NASEEMA, W/O.LATE K.P.ABDUL HAMEED
KUNDOTTUPARAMBIL HOUSE, KARYAVATTOM, MAMMARMALA P.O.
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT, PIN-679 325.
3. MOHSINE, D/O.LATE K.P.ABDUL HAMEED,
KUNDOTTUPARAMBIL HOUSE, KARYAVATTOM, MAMMARMALA P.O.
PIN-679 325, PERINTHALMANNA TALUK
MALAPPURAM DISTRICT.

R2 AND R3 BY ADV. SRI.K.MUHAMMED SALAHUDHEEN
R1 BY GOVERNMENT PLEADER SRI.RENNY STEPHEN CHAMAPARAMBIL

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF THE LETTER DATED 11.4.2001 ISSUED BY THE KERALA STATE HOUSING FEDERATION TO THE PETITIONER, ALLOTING THE LIC BENEFIT OF THE DECEASED LOANEE.
- EXT.P2 TRUE COPY OF THE RULES OF THE GROUP INSURANCE SCHEME OF THE KERALA STATE CO-OPERATIVE HOUSING SOCIETY.
- EXT.P3 TRUE COPY OF THE DECREE IN ARC.1536/02-03 PASSED BY THE ARBITRATOR DATED 23.12.2002.
- EXT.P4 TRUE COPY OF THE JUDGMENT OF THE HIGH COURT IN O.P.NO.6089 OF 2003(Y) DATED 14.7.2003.
- EXT.P5 TRUE COPY OF THE PETITION OF RP.NO.453/2003 SUBMITTED BY THE REVISION PETITIONERS/RESPONDENTS 2 AND 3 BEFORE THE FIRST RESPONDENT TRIBUNAL.
- EXT.P6 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT TRIBUNAL IN R.P.NO.453 OF 2003.
- EXT.P7 TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT TRIBUNAL IN R.P.NO.453/2003 DATED 28.05.2010, SETTING ASIDE EXT.P3 DECREE.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

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Dated this the 23rd day of March, 2015

JUDGMENT

The Perinthalmanna Taluk Rural Housing Co-operative Society Limited (hereinafter referred to as 'the Society') granted a housing loan to the tune of ₹2,60,000/- to K.P.Abdul Hameed, the predecessor-in-interest of respondents 2 and 3. Amounts were due to the Society. Arbitration proceedings were initiated under Section 69 of the Kerala Co-operative Societies Act against Abdul Hameed. During the pendency of the arbitration proceedings, Abdul Hameed died. On the death of Abdul Hameed, the Life Insurance Corporation of India released a sum of ₹2,16,680/- towards the group insurance benefit. The Society received the said sum of ₹2,16,680/-. The Arbitration Reference Case was withdrawn by the Society and, thereafter, the present Arbitration Case, namely, ARC.1536/02-03 was filed before the Assistant Registrar of Co-operative Societies (General), Perinthalmanna, against the legal representatives of Abdul Hameed. The legal representatives of Abdul Hameed remained absent and an exparte decree was passed by the

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Arbitrator for a sum of ₹2,25,864.60 in favour of the Society. The decree in ARC.No.1536/02-03 was challenged by the legal representatives of Abdul Hameed in R.P.No.453 of 2003 before the Kerala Co-operative Tribunal, Thiruvananthapuram. The Tribunal, as per Ext.P7 order dated 28.5.2010, set aside the award. The Tribunal held that before withdrawing the Arbitration Reference Case by the Society no permission was granted and, therefore, the Society was not justified in filing another Arbitration Reference Case. The Tribunal also held that in view of Rule 106(1) of the Kerala Co-operative Societies Rules fresh proceedings are barred. The Society should have impleaded the legal representatives of Abdul Hameed in the proceedings and that course having not been adopted, the Society was not justified in initiating another Arbitration Reference Case. The Tribunal also found that the sum of ₹2,16,680/- received from the Life Insurance Corporation should have been adjusted towards the principal sum of ₹3,05,753/- as on that day and if so, the balance amount would be only ₹89,073/- plus costs, which would come to ₹93,685.40. The Society was not justified in filing the Arbitration Reference Case claiming a sum of ₹1,96,792/-.

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2. The Tribunal was not justified in holding that Rule 106 will apply. Rules 104 to 106 occur in Chapter XII of the Rules, which deals with appeals, revision and review. Rules 104 to 106 provides the procedure for impleading, setting aside abatement etc. which are akin to the provisions of Rules 2 to 4 of Order XXII and Section 5 of the Limitation Act. But Rules 104 to 106 do not apply to proceedings before the Arbitrator. Learned counsel for the petitioner submitted that Rule 74 will apply. Sub-rule (4) of Rule 74 provides that where a defaulter dies before the decree has been fully satisfied, an application under sub-rule (1) may be made against the legal representatives of the deceased and thereupon all the provisions of Rule 74 shall apply, as if such legal representatives were defaulters. But Rule 74 as such may not apply to proceedings other than execution of the award.

3. A Division Bench of this Court in **Thankam R. Pillai v. Arbitrator (1996 (1) KLT 225)** held that the Arbitrator has power to implead the legal representatives of a deceased party in a proceeding pending before him. The contrary view taken in **Bhaskaran Nair v. Co-operative Tribunal, Trivandrum (1976 KLT**

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18) was overruled by the Division Bench. The Division Bench relied on the decisions in Gwalior Rayons, Mavoor v. Labour Court ((1978) 2 Lab.L.J.188), Cheru Ouseph v. Kunjipathumma (1981 KLT 495), Ebrahim Ismail Kunju v. Phasila Beevi (1991 (1) KLT 861), Rameshwar Manjhi v. Management of Sangramgarh Colliery (AIR 1994 SC 1176) and Gujarat Steel Tubes Ltd. etc. v. Gujarat Steel Tubes Mazdoor Sabha and others (AIR 1980 SC 1896).

4. In view of the settled legal position, the Society should have taken steps to implead the legal representatives in the first proceedings before the Arbitrator. Instead, the Society withdrew that proceedings without the permission of the Arbitrator and thereby the Society is precluded from initiating fresh arbitration proceedings. The Tribunal was justified in setting aside the award passed by the Arbitrator. There is no ground to interfere in this Original Petition.

5. The learned counsel appearing for respondents 2 and 3 submitted that various amounts were paid by them to the Society and, therefore, there will be no balance due to the Society. The

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learned counsel for the petitioner submitted that even if the view taken by the Tribunal is accepted, some more amount will be still due to the Society. The learned counsel appearing for respondents 2 and 3 submitted that, as per their faith, as legal representatives they should discharge whatever was due from their predecessor and they would not hesitate to pay any amount legally due to the Society. This submission is recorded.

The Original Petition is disposed of as above.

(K.T.SANKARAN)
Judge

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