

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WA.No. 960 of 2007 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 27996/2003 DATED 02-11-2006)

APPELLANT(S)/PETITIONERS:

- 1. KISHORE KUMAR, S/O. PANDIYATH SEKARAN,
PUTHOOR DESOM, KAIPARAMBU VILLAGE,
THRISSUR TALUK.**
- 2. LEELA RAMAKRISHNAN, W/O. RAMAKRISHNAN,
VADERIYATTIL HOUSE, PUTTEKKARA, ANJOOR P.O.,
MUNDOOR, THRISSUR.**

**BY ADVS.SRI.P.VIJAYA BHANU
SMT.K.S.CHANDRIKA**

RESPONDENT(S)/RESPONDENTS:

- 1. THE DEPUTY TAHSILDAR,(REVENUE RECOVERY),
THRISSUR.**
- 2. THE DISTRICT COLLECTOR, THRISSUR.**
- 3. THE ASSISTANT GENERAL MANAGER,
STATE BANK OF INDIA, MAIN BRANCH, THRISSUR.**
- 4. MANOJ KUMAR V.,
VADAKKUMCHERRY HOUSE, PUTHOOR.**
- 5. SAJEEV P.U.,
PERUMPILATHOPPI HOUSE, POTTEKKARA, ANJOOR P.O.,
MUNDOOR, THRISSUR.**
- 6. HARISREE OFFSET PRINTERS,
KAIPARAMBU, REPRESENTING BY MANAGER PARTNER,
SAJEEV P.U., PERUMPILATHOPPI HOUSE, POTTEKKARA,
ANJOOR P.O., MUNDOOR, THRISSUR.**

**R1 & R2 BY SPL. GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R3 BY ADV. SRI.P.GOPAL
SRI.P.GPARAMESWARA PANICKER**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

W.A.NO.960/2007

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX A COPY OF TE NOTICE NO.RR2 1021/03 BY TE 2ND RESPONDENT AND
THE LIST OF ARTICLES ATTACHED ON 27/6/2006.**

RESPONDENT'S ANNEXURES:

**ANNEX R3(A) COPY OF THE VALUATION REPORT SUBMITTED BY THE CHARTERED
ENGINEER DATED 12/06/2007.**

/TRUE COPY/

P.A.TO.JUDGE

sts

**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

*** * * * ***

W.A.No.960 of 2007

Dated this the 5th day of January 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard learned counsel for the appellants as well as the learned counsel appearing for the bank.

2. This writ appeal has been filed by the petitioners against the judgment dated 02/11/2006 passed in W.P.C.No.27996/2003. The writ petition was filed by the petitioners aggrieved by the recovery proceedings initiated by the bank under the Revenue Recovery Act. The learned Single Judge disposed of the writ petition by the following order.

“The petitioners along with 4th respondent and 5th respondent and one Mr.Rajesh availed a loan amount up to Rs.95,000/- each, from the third respondent, for starting a press. Loan was availed in the year 2000. In the course of time, the borrowers have paid only Rs.45,000/-, is the case of the Bank. Even as on 1.3.2003, the loan amount was above Rs.5 Lakhs. The argument of the counsel for the petitioners is that the

petitioners have retired from the partnership firm and therefore revenue recovery proceedings cannot be initiated or continued against them. I am unable to accept the contention because loan was not availed by the firm, but by the individual partners. The arrangement between the partners whether through partnership deed or written deed does not bind the creditor institution. The bank is free to proceed for recovery against the borrowers. However I feel if petitioners remit 10% and make application for OTS benefits before 20.2.2007, the bank will grant incentives under OTS scheme. If there is no settlement, then recovery will continue because being a small business loan it is covered by notification under section 71 of the Revenue Recovery Act. Even if OTS scheme is not applicable there will be a direction to the bank to waive the penal interest provided arrears are paid before 15.3.2007."

3. By the impugned order, the learned Single Judge had decided to extend the benefit of waiver of interest to the petitioners on condition that they remit 10% and make application for OTS benefits before 20/02/2007. The learned Single Judge further observed that if there is no settlement, the recovery will continue.

4. In pursuance of the order of the learned Single Judge, neither 10% amount was deposited nor any OTS application was made by the petitioners. In the writ appeal, however, the Division Bench passed an interim order on 12/04/2007 permitting two months time to the petitioners to deposit 10% of the amount demanded. The case of the appellants is that in pursuance of the interim order dated 12/04/2007, 10% amount has been deposited.

5. Learned counsel for the appellants submitted that there is an inter se dispute between the partners and the matter may be sent to the Lok Adalath for settlement of inter se dispute between the partners.

6. The writ petition was filed challenging Ext.P4 revenue recovery proceedings. Loan was granted to the petitioners under PMY Scheme and it is the submission of the learned counsel for the appellants that proceedings under the Revenue Recovery Act are not permissible. Admittedly, default was committed in repayment of the amount and revenue recovery proceedings could not be

faulted. The learned Single Judge granted an indulgence regarding waiver of interest on remitting 10% of the amount demanded and submitting an application for OTS, which was not done by the petitioners.

7. Extending the benefit of waiver of interest was time bound, which having not been availed, the appellants cannot be extended the said benefit, as of now. We, however, observe that the amount deposited under the interim order dated 12/04/2007 of this Court shall be adjusted towards the amount deposited by the appellants in pursuance of the recovery proceedings. This judgment shall, however, be without any prejudice to the appellants to avail the benefit of any pending scheme of the bank.

With these observations, this writ appeal is dismissed.

(sd/-)

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

