

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WA.No. 157 of 2015 () IN WP(C).3706/2009

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AGAINST THE JUDGMENT IN WP(C) 3706/2009 of HIGH COURT OF KERALA DATED
12-08-2014**

APPELLANT(S)/PETITIONERS:

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- 1. PAUL P KUREEKAL
U.D.CLERK, DISTRICT ANIMAL HUSBANDRY OFFICE
ERNAKULAM DISTRICT, RESIDING AT KUREEKAL HOUSE
KIZHAKKAMBALAM, KUNNATHUNAD VILLAGE
ERNAKULAMDISTRICT.**
 - 2. P.C.CHANDRASEKHARAN
ATTENDANT, VETERINARY POLY CLINIC, MOOVATTUPUZHA
RESIDING AT PADATHIL HOUSE, MOOVATTUPUZHA TALUK
ERNAKULAM.**

**BY ADVS.SRI.M.PASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA**

RESPONDENT(S)/RESPONDENTS:

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- 1. THE SALES OFFICER
SENIOR INSPECTOR OF CO-OPERATIVE SOCIETIES
FOR ARBITRATION AND PROSECUTION
MOOVATTUPUZHA, ERNAKULAM DISTRICT - 686 661.**
 - 2. THE SECRETARY
GOVERNMENT SERVANTS CO-OPERATIVE SOCIETY LTD NO.146
MOOVATTUPUZHA, ERNAKULAM DISTRICT -686 661.**
 - 3. THE SENIOR VETERINARY SURGEON
VETERINARY HOSPITAL, PIRAVOM
ERNAKULAM DISTRICT - 686 664.**
 - 4. JANAMMA THANKAPPAN
W/O.LATE THANKAPPAN, PATTIKUZHIL VEEDU, KAYANAAD
OORAMANA - 686 663.**

**R4 BY ADV. SRI.CYRIAC MATHEW
R2 BY ADV. SRI.JOSHI N.THOMAS
R1 BY ADV. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

avk

**P.R.RAMACHANDRA MENON
&
BABU MATHEW P.JOSEPH, JJ.**

W.A.No.157 of 2015

Dated this the 19th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON.J

Interference declined by the learned single Judge with regard to the liability sought to be mulcted upon the writ petitioners/appellants, who were guarantors to a loan availed by the deceased husband of the 4th respondent, is the subject matter of challenge in this appeal.

2. The gist of the facts and circumstance revealed from the proceedings is that, a loan of Rs.47,000/- was availed by the deceased husband of the 4th respondent, who was a co-worker of the writ petitioners/appellants. In the course of time, they got transferred out to different offices and virtually had no contact for a long time. It was subsequently revealed that the due amount was not satisfied by the borrower, by virtue of which appropriate proceedings were taken by the respondent Society for realizing the due amount by filing ARC No.3384/2005 before the departmental authorities. The Society got a favourable verdict and was permitted to realize the due amount. The liability was cast upon the shoulders of the borrower as well as the guarantors, jointly and severally. In the course of further proceedings, the petitioners/appellants were

sought to be proceeded against, when they approached this Court by filing the writ petition; referring to the facts and figures, particularly that the service benefits payable on behalf of the deceased husband of the 4th respondent might be caused to be set off; More so, in the light of Ext.P3 undertaking given by the 4th respondent, whereby she had volunteered to satisfy the entire liability on getting the due amount towards the service benefits including the DCRG on demise of her husband and that no proceedings might be pursued against the guarantors.

3. After hearing both the sides, the learned single Judge observed, that the liability to satisfy the due amounts to the Society was 'joint and several' and in the said circumstance, there was absolutely no merit to interfere with the proceedings. Accordingly, the writ petition was dismissed, which in turn is sought to be challenged by filing this appeal.

4. When the matter came up before this Court earlier, it was submitted that the amount due to the society was actually satisfied, which position was sought to be rebutted by the learned Counsel appearing for the Society. A detailed affidavit was filed before this Court by the 2nd respondent Society, also producing copies of the relevant documents. The appellants have filed I.A.No.921/2015 producing some additional documents. A counter affidavit is filed from the part of the 3rd respondent, referring to the sequence of events. After hearing both the sides, this Court finds

that the liability to the Society is not fully cleared and that the amount recovered by the 3rd respondent, from the terminal benefits payable to the deceased husband of the 4th respondent, was only to an extent of Rs. 17,129/-. It is also brought to the notice of this Court that the entire terminal benefits including the DCRG, but for the said amount have already been released to the 4th respondent, the widow of the deceased.

5. Despite the completion of service of notice, the 4th respondent has not turned up before this Court. The learned Counsel for the Society submits that a sum of Rs.1,05,194/- is still lying as the outstanding liability. It is also stated by the learned Counsel for the Society that the Society has considered whether any benefit could be extended to the deceased borrower in view of the particular facts and circumstance of this case and that the Society has taken a decision to give substantial deduction to an extend of Rs.40,564/-. If the appellants satisfy the balance sum of Rs. 64,630/-, the liability can be written off once and for all; submits the learned counsel which is readily agreed upon by the learned counsel appearing for the appellants.

6. In the above circumstance, the appellants are required to satisfy the said liability at the earliest, at any rate, within two months. Coercive proceedings if any, shall be kept in abeyance till such time. It is made clear that, if any default is committed in satisfying the liability as above, it will be open for the concerned

respondents to proceed with further steps for realizing the entire amount in a lump. It is open for the appellants to remit the said amount in a lump or to satisfy by way of two installments, of course within the said period of two months. No petition for extension of time will be entertained under any circumstance.

7. Once the liability is satisfied as above, it is open for the appellants to proceed against the 4th respondent / legal heirs in respect of the liability to the extent they have inherited properties / assets amounts from the deceased husband of the 4th respondent. The writ appeal is disposed of accordingly.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P.JOSEPH
JUDGE**

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PA TO JUDGE

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