

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937H

WP(C) .No. 1288 of 2012 (I)

PETITIONER:

THE MANJOOR SERVICE CO-OPERATIVE BANK LTD,
NO.K.73, REPRESENTED BY ITS SECRETARY, AGED 48 YEARS
KURUPPANTHARA, MANJOOR P.O., KOTTAYAM-686 603.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
CO-OPERATION(C) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695 001.
3. THE JOINT REGISTRAR(GENERAL) OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE JOINT REGISTRAR (G) OF CO-OPERATIVE
SOCIETIES, KOTTAYAM-686 001.
4. THE ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE
SOCIETIES, VAIKOM, KOTTAYAM-686 141.
5. K.C.LAL KUMAR
CHIRAYIL HOUSE, MANJOOR SOUTH P.O., KOTTAYAM-686 603.
6. N.M.BHAVANI
W/O. K.C.LAL KUMAR, CHIRAYIL HOUSE, MANJOOR SOUTH P.O.,
KOTTAYAM-686 603.

R5,R6 BY ADV. SRI.N.RAGHURAJ
R5,R6 BY ADV. SMT.K.AMMINIKUTTY
R2 BY ADV. GOVERNMENT PLEADER, SRI. RAFAEEK.V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-10-2015, ALONG WITH WPC. 2000/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : A TRUE COPY OF THE GOVERNMENT ORDER (PRINTING)
NO.100/2009/SC/ST DEVELOPMENT DEPARTMENT, DTD.12.11.2009.
- EXT.P2 : A TRUE COPY OF THE CIRCULAR 61/2009 DTD.18.12.2009.
- EXT.P3 : TRUE COPY OF THE INTIMATION LETTER OF THE PETITIONER TO THE
5TH RESPONDENT DTD.17.10.2011.
- EXT.P4 : TRUE COPIES OF THE INTIMATION LETTER OF THE PETITIONER TO
THE 6TH RESPONDENT DTD.17.10.2011.
- EXT.P5 : A TRUE COPY OF THE COMPLAINT GIVEN BY THE 5TH RESPONDENT
BEFORE THE 3RD RESPONDENT DTD.28.10.2011.
- EXT.P6 : TRUE COPY OF THE COMMUNICATION NO.37/2011 DTD.28.10.2011 OF
THE 4TH RESPONDENT.
- EXT.P7 : TRUE COPY OF THE COMMUNICATION NO.C.R.P.(2)54/2011 DTD.
9.12.2011 OF THE 3RD RESPONDENT.
- EXT.P8 : A TRUE COPY OF THE RESOLUTION NO.472 DTD.16.12.2011.
- EXT.P9 : A TRUE COPY OF THE COMMUNICATION OF THE PETITIONER TO THE
RESPONDENTS 5 AND 6 DTD.24.12.2011.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) Nos. 1288 & 2000 of 2012

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Dated this the 27th day of October, 2015

J U D G M E N T

The parties are common in the both Writ Petitions. For convenience, parties are referred to as shown in the first Writ Petition No. 1288/2012. Though, this Writ Petition has been filed challenging the power of the Government to issue direction to the Co-Operative Societies to write off the penal interest and recovery expenses. The learned counsel for the petitioner fairly submits that the said issue is pending before a Division Bench of this Court. So this question is not pressed at present in this Writ Petition. The Writ Petition No. 2000/2012 was filed by the respondent Nos. 5 and 6 in the Writ Petition No. 1288/2012 to issue a writ of mandamus, orders or direction compelling and commanding the petitioner Bank to extend the benefit of Ext. P1 G.O. and circular issued thereunder to them and write-off their entire

liability to the Bank.

2. The petitioners in W.P.(C) No. 2000/2012 are the loanees, who have availed loans for an amount of Rs.75,000/- each from the petitioner bank in the year 2003. Subsequently, they have defaulted payments and while so, Ext.P1 Government Order has come into force. Respondents 5 and 6 belong to Scheduled Caste Community and by Ext.P1 Government Order, the Government has granted certain financial benefits to the loanees belonging to Scheduled Caste and Scheduled Tribe, who have availed of loans from the Co-Operative societies and subsequently, failed to repay the amount promptly. According to the petitioner bank, the bank has already granted all the benefit to respondents 5 and 6 due under Ext.P1 Government Order as explained in Ext.P2 circular. According to the bank, after deducting all the benefits now the amount due from respondents 5 and 6 is Rs.95732/- each. But, according to respondents 5 and 6, after deducting the benefits due under Exts.P1 and P2 they are liable to pay Rs.40,000/- each only

and they have already paid off the said amount under Ext.P7 and P7(a) in W.P.(C)No. 2000/2012. Thus, no amount is due to the bank from respondents 5 and 6. So the question to be considered is, whether the respondents 5 and 6 are given all the financial benefits due to them under Exts.P1 and Ext.P2.

3. Heard; the learned Counsel for the petitioner and the learned Standing Counsel for the respondents 5 and 6.

4. Going by the pleadings in these Writ Petitions, I find that the question to be considered is a disputed fact only and this Court in exercise of the jurisdiction under Art.226 of the Constitution of India cannot decide a disputed fact. Therefore, I am not inclined to consider the question in controversy in these Writ Petitions. The parties are relegated to 4th respondent to decide the matter in dispute involved in these Writ Petitions.

5. The parties are directed to produce the copy of these Writ Petitions along with copy of this judgment to the 4th respondent and the 4th respondent shall consider the dispute involved in these Writ Petitions as regards the

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liability of the respondents 5 and 6 to the petitioner Bank, in the light of the benefit due to defaulted lonees who belongs to Scheduled Caste/Scheduled Tribes under Exts.P1 and P2 and pass orders quantifying the amount, if any, within a period of two months from the date of receipt of the copy of this judgment, after hearing both sides.

6. Needless to say, the 4th respondent shall issue notice informing the date of hearing to both parties. The interim order will continue, till the disposal of the matter in issue by the 4th respondent.

These Writ Petitions are disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge