IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WA.No. 691 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 11184/2010 DATED 29-08-2014)

APPELLANT/PETITIONER:

JAYACHANDRAN, AGED 42 YEARS,
S/O GANGADHARAN POTTI, PROPRIETOR, PALLAVI EXPORTS,
PURATHUVELLIL MADOM, CHARAMANGALAM, MUHAMMA P.O.,
ALAPPUZHA DISTRICT.

BY ADVS.SRI.M.R.ARUNKUMAR
SRI.P.SHAMMI NAVAS

RESPONDENTS/RESPONDENTS:
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1. THE MANAGING DIRECTOR,
KERALA STATE COIR CORPORATION LIMITED.,
P.B.NO.191, ALAPPUZHA-688 001.

2. THE DISTRICT COLLECTOR,
ALAPPUZHA DISTRICT, ALAPPUZHA-688 001.

3. THE DEPUTY TAHSILDAR (R.R),
CHERTHALA TALUK, ALAPPUZHA-688 524.

4. THE SECRETARY,
DEPARTMENT OF INDUSTRIES AND COMMERCE,
THIRUVANANTHAPURAM-695 001.

R1 BY SRI.ASHOK B.SHENOY, SC, COIR CORPORATION
R2 TO R4 BY SR GOVERNMENT PLEADER P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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ASHOK BHUSHAN, C.J.
&
A.M. SHAFFIQUE, J.

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W.A. No. 691 of 2015

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Dated this, the 5th day of August, 2015

J U D G M E N T

Shaffique, J.

Petitioner had approached this Court challenging the revenue recovery proceedings initiated against him at the instance of the 1st respondent. The main contention urged by the petitioner is that the amount due has not been settled and he has no liability to pay the amount. Secondly, it is contended that though proceedings under Section 138 of the Negotiable Instruments Act had been initiated against him, the same ended in acquittal. Under such circumstances, the revenue recovery proceedings is bad in law and hence the petitioner sought for quashing of proceedings pursuant to Exts.P3 and P4 notices issued by the 3rd respondent, viz., Deputy Tahsildar (R.R), Cherthala Taluk.

2. The averments in the writ petition would disclose that the petitioner, being the Proprietor of Pallavi Exports, had

business dealings with the 1st respondent and he used to buy coir products from the 1st respondent on credit basis. It is thereafter stated that though proceedings under Section 138 were initiated, the same ended in acquittal. Ext.P3 is a demand notice issued under Section 7 of the Kerala Revenue Recovery Act by which the recovery sought is for an amount of ₹4,13,803/-. Ext.P4 is issued under Section 34 of the Act for attachment of movable and immovable property of the petitioner for recovering the very same amount.

3. The contention urged by the learned counsel for the petitioner is that the entire proceedings is illegal and the petitioner also referred to various judgments of the Supreme Court to indicate that in so far as the liability of the petitioner has not been settled, it does not become an 'amount due' and therefore, no proceedings can be taken under Section 71 read with Section 7 of the Revenue Recovery Act. Learned Single Judge after an elaborate consideration of the entire materials placed on record and also the judgments relied on by the petitioner, dismissed the writ petition, however, observing that the petitioner is entitled for adjudication under the Kerala Revenue Recovery Act after payment of the amount under protest.

4. Learned counsel for the petitioner/appellant submits that no revenue recovery proceedings shall be initiated against the petitioner in so far as the liability had not been settled. He mainly relied upon the fact that he was acquitted by the criminal court when a prosecution was initiated against him under Section 138 of the Negotiable Instruments Act. The fact that the petitioner was purchasing materials from the 1st respondent on credit basis is not disputed. Petitioner had not disclosed the entire transaction between the petitioner and the 1st respondent whereas the petitioner only proceeds on the basis that the revenue recovery proceedings is bad in law.

5. In the counter affidavit filed by the 1st respondent, it is stated that petitioner is liable to pay ₹3,34,451 with regard to the value of coir products sold and along with interest, the total amount due becomes ₹4,13,803/. Out of the said amount, cheque was issued only for ₹2,64,976/- which was dishonoured and therefore steps were taken under Section 138 of the Negotiable Instruments Act. It was stated that the demand was the bill amount payable by the petitioner for the materials supplied. Having regard to this factual situation, learned Single Judge opined that there is no reason why this Court should adjudicate as

to whether there was a settlement of liability between the petitioner and the 1st respondent.

6. Learned counsel for the appellant would submit that the purchases were made through some agent and he had discharged portion of the amount which had been claimed by the respondent authorities. In fact, petitioner cannot dispute a claim based on an unpaid bill amount, which becomes the amount due as far as the 1st respondent is concerned. There is no dispute about the fact that the 1st respondent is entitled to initiate revenue recovery proceedings by virtue of a notification issued by the Government. If the petitioner has any dispute regarding the liability to pay or that he claims discharge, his right is to approach the revenue recovery authorities or to file a civil suit in terms with the procedure prescribed under the Kerala Revenue Recovery Act. This is not a case of assessment of damages and most of the judgments relied on by the learned counsel for the appellant and as narrated by the learned Single Judge is with reference to assessment of damages in case of breach of contract. The question which arises in the present case is whether the amount demanded was an amount due. Learned counsel for the appellant submits that the entire liability is denied. According to the 1st

respondent, revenue recovery is initiated for the amount due under a bill for which credit supplies had been made. Petitioner had not raised any dispute regarding the said bill at any point of time before filing this writ petition. In such circumstances, it cannot be adjudicated by this Court as to whether the revenue recovery proceedings is bad in law as matters stand now. Petitioner has all the right to challenge the said proceedings by claiming discharge or seeking for settlement of account by filing appropriate civil suit.

In the said circumstances, we do not think that the learned Single Judge had committed any error in dismissing the writ petition. Reserving the right of the petitioner to approach the appropriate authorities/civil court for necessary reliefs, this appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge