

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WA.No. 836 of 2014 () IN WP(C).36089/2009

**AGAINST THE ORDER/JUDGMENT IN WP(C) 36089/2009 of HIGH COURT OF KERALA
DATED 10-04-2013**

APPELLANT(S)/2ND RESPONDENT:

**JOSEPH J.THERMADAM
S/O.T.J.JOSE, THERMADAM HOUSE, PATTIKKAD
THRISSUR DISTRICT.**

BY ADV. SRI.M.PASHOK KUMAR

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 AND 3:

- 1. THE PEECHI SERVICE CO-OPERATIVE BANK LTD. NO. R-935
VILANGANNUR, THRISSUR
REPRESENTED BY ITS SECRETARY-680653.**
- 2. ARBITRATOR/INSPECTOR OF CO-OPERATIVE SOCIETIES
OFFICE OF THE ASSISTANT REGISTRAR FOR
CO-OPERATIVE SOCIETIES (GEN.)
CIVIL STATION, AYYANTHOLE, THRISSUR-680003.**
- 3. C.V.ANIL KUMAR
S/O.VASU, RESIDING AT CHUKKATH HOUSE, POLOOKARA P.O.
ERAVIMANGALAM P.O., THRISSUR DISTRICT-680751.**

**R1 BY ADV. SRI.B.S.SWATHY KUMAR
R1 BY ADV. SRI.REMYA MURALI
R1 BY ADV. SRI.A.K.RAJESH
R1 BY ADV. SRI.VENKATESH GOPI
BY SR GOVERNMENT PLEADER SRI.M.K.ABOOBACKER**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22-01-2015,
ALONG WITH WA. 837/2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
=====

Writ Appeal Nos. 836 & 837 of 2014
=====

Dated this the 22nd day of January, 2015

J U D G M E N T

Antony Dominic, J.

These two writ appeals arise from the judgment of the learned single Judge in WP(C) No.36089/2009 which was filed by the Bank and WP(C) No.30963/10, which was filed by the appellant herein.

2. Briefly stated, the facts of the case are that the appellant herein had availed six loans from the Peechy Service Co-operative Bank (hereinafter referred to as the 'Bank' for short) mortgaging 12.9 ares of his father's property. Default was committed and the Bank filed six arbitration cases against the appellant. During the pendency of those arbitration cases bearing ARC Nos.6213 to 6218/2006, WP(C) No.18847/07 was filed before this Court for release of the title documents deposited by the appellant. That writ petition was disposed of by judgment dated 29/6/07 directing the appellant to deposit an amount of ₹2.75 lakhs and the Bank was directed to release the title deeds deposited by the appellant, which, it was clarified, shall be without prejudice to the Bank to claim balance amount. Bank thereafter filed RP No.703/07 in which this

Court passed order dated 25/7/07 requiring the appellant to deposit a further amount of ₹60,000/-. Thus, the appellant deposited a total amount of ₹3.35 lakhs in fixed deposit and on deposit of the amount as above, the title deeds were also released to the appellant.

3. According to the Bank, in the ARCs filed by them, arbitration awards were passed on 19/3/2007, entitling the Bank to realise the amounts that were due from the appellant. It was stated that, as on 5/12/2009, total amount due from the appellant was ₹4,09,770/- and that the maturity value of the deposit made by the appellant was only ₹4,08,851/-. At that stage, the Bank passed resolution to appropriate the maturity value of the amount in deposit and to close the execution petitions that were filed.

4. While matters stood thus, the Arbitrator issued notice dated 25/2/2009 posting the ARCS, in which the awards were passed on 19/3/2007, to 16/3/2009 for hearing. Thereafter, the Arbitrator passed award dated 29/7/09 dismissing the ARCs filed by the Bank with liberty to file fresh ARCs. It was at that stage the Bank filed WP(C) No.36089/2009 against the award dated 29/7/09. On the strength of the award dated 29/7/09, the

appellant also made a request to release the maturity value of the fixed deposit. When that was not released by the Bank, the appellant approached this Court by filing WP(C) No.30963/2010. The learned single Judge disposed of the writ petition by a common judgment rendered on 10th of April, 2013. In that judgment, the learned single Judge, on the material available before him, found that the awards dated 19/3/2007 were passed on a mistake committed by the arbitrator and that therefore, the learned Judge uphold the subsequent award dated 29/7/09 and it is challenging these judgments, the writ appeals are filed.

5. We heard the learned counsel for the appellant, learned Government Pleader and the learned counsel for the Bank.

6. Reading of the judgment itself shows that it was on account of a mistake committed by the arbitrator that the awards dated 19/3/2007 happened to be passed. Therefore, the arbitrator cannot be faulted for giving liberty to the Bank to file fresh ARCs in his award dated 29/7/09. However, the learned counsel for the appellant has a contention that he has already closed account Nos.26 and 27 and it is also contended that any arbitration

proceedings now instituted by the Bank would be barred in view of the provisions contained in Section 69(4) of the Kerala Co-operative Societies Act. In our view, it is not necessary for us to go into these contentions. According to us, these are matters which are open to the appellant to raise before the arbitrator himself as and when the arbitrator considers fresh arbitration cases, which are already filed by the Bank, on merits.

We, therefore, dispose of these writ appeals clarifying that it would be open to the appellant to urge all his contentions available to him before the arbitrator and that none of the observations in the judgment would stand in his way in that matter.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge