

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WA.No. 1579 of 2015

WP(C) 14147/2011, DATED 26-05-2015

APPELLANT(S)/2ND RESPONDENT:

**KERALA STATE BACKWARD CLASSES DEVELOPMENT
CORPORATION LIMITED,
REPRESENTED BY ITS DISTRICT MANAGER, DISTRICT OFFICE,
P.M.KUTTY ROAD, ERINJIPPALAM P.O.,
KOZHIKODE - 673 524.**

BY ADV. SRI.JAYAPRADEEP. V.

RESPONDENT(S)/PETITIONER & RESPONDENTS 1, 3 TO 6:

- 1. RADHAKRISHNAN PAVOOR, AGED 50 YEARS,
PAVOOR HOUSE, THAROPOLAR P.O., PONMERI VIA
VADAKARA, KOZHIKODE DISTRICT-673101.**
- 2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA,
SOCIAL WELFARE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE ASSISTANT EDUCATIONAL OFFICER,
NADAPURAM, KOZHIKODE DISTRICT - 673 525.**
- 4. THE DEPUTY DIRECTOR OF EDUCATION,
OFFICE OF THE D.D (EDN.) NEAR MANANCHIRA,
KOZHIKODE-673001.**
- 5. THE ASST. EDUCATIONAL OFFICER
OFFICER OF A.E.O KUNNUMMEL, VATTOLY P.O.,
KAKKATTIL VIA, KOZHIKODE DISTRICT-673507.**

PJ

.....2/-

WA.No. 1579 of 2015

**6. THE TAHASILDAR (RR),
TALUK OFFICE, VADAKARA,
KOZHIKODE DISTRICT-673101.**

**R1 BY SRI. JOHN JOSEPH (ROY)
R2-6 BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.1579 of 2015

Dated this the 23rd day of July 2015

J U D G M E N T

Shaffique, J

Second respondent in W.P.C.No.14147/2011 is the appellant who challenges the judgment dated 26/05/2015 by which the learned Single Judge allowed the writ petition filed by the 1st respondent herein.

2. Writ petition was filed inter alia challenging the revenue recovery proceedings initiated by the appellant for the amount due under a contract by which loan was granted in favour of the writ petitioner. It is stated in the writ petition that there was neither renewal of the loan account nor there was any acknowledgment of any debt. After payment of the 32nd instalment on 31/03/2004, no payment was made on the loan account. The main contention urged by the petitioner was that no recovery can be made from his salary as the debt was barred by limitation. Ext.P1 is signed by the District Manager to the Assistant Educational Officer, Nadapuram calling upon the said

Disbursing Officer to recover the dues from the loanee, the writ petitioner. Petitioner, in fact, challenged Ext.P5 revenue recovery notice issued by the Tahsildar (Revenue Recovery) on 19/12/2011. It is contended that the instalments were defaulted after 31/03/2004 and therefore revenue recovery is barred by limitation.

2. No counter affidavit was filed by the respondents.

3. After hearing the parties, the learned Single Judge observed that the recovery initiated by the appellant was barred by limitation and therefore the writ petition was allowed. Reference was also made to the judgment of the Supreme Court in **State of Kerala v. Kalliyankutty** [1999(2) KLT 146 (SC)].

4. It is contended by the learned counsel for the appellant that Ext.P4 letter issued by the petitioner clearly discloses an acknowledgment of debt and therefore recovery proceedings were initiated within the period of limitation as the appellant is entitled for extension of period of limitation as per Ext.P4.

5. The learned Single Judge noticed the fact that the loan was granted with the condition to pay the amounts in 60 instalments and last of the instalments was payable as on 11/07/2006. No steps were taken by the appellant to initiate

revenue recovery proceedings by sending request to the District Collector within three years and therefore the same is barred by limitation.

6. Though the learned counsel appearing for the appellant relied upon Ext.P4 as acknowledgment of liability, learned Single Judge did not accept the contention that Ext.P4 would lead to an acknowledgment of the liability. It is contended by the learned counsel for the appellant that the said view expressed by the learned Single Judge that Ext.P4 does not disclose the acknowledgment of liability is absolutely wrong. We do not agree with the said contention. Ext.P4 is already extracted by the learned Single Judge. In Ext.P4, the petitioner, after receiving a notice of payment, has indicated that he has dispute regarding the rate of interest and penal interest claimed by the Department. It is also stated that he has dispute regarding the liability to pay the same and that he proposes to proceed to file an appeal. He also requested the appellant, that the revenue recovery proceedings may be deferred.

7. Though Ext.P4 had been sent by the petitioner, no reply had been issued by the appellant to Ext.P4. A debt is acknowledged, if the debtor, in clear and specific terms, admits

the liability to pay. Here there is no such admission or acknowledgment of debt whereas the petitioner has raised a dispute regarding the liability to pay. Further, perusal of Ext.P4 does not indicate that it gives a right for extension of time as far as the petitioner is concerned. No reply had been sent by the appellant to Ext.P4 extending time for payment. Hence, we do not think that the learned Single Judge had committed any error in not treating Ext.P4 as acknowledgment of liability.

Under such circumstances, it is clear that the initiation of revenue recovery is within the period of limitation as held in the judgment in **Kalliyankutty** (supra). We find no ground to interfere with the judgment of the learned Single Judge and accordingly the writ appeal is dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

