

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 2808 of 2010 (A)

PETITIONER:

**M.RAJAN,
THARAVATTATH HOUSE
KUTTIADI POST, KOZHIKODE.**

**BY ADVS.SRI.G.UNNIKRISHNAN
SRI.K.SANEESH KUMAR**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR, KOZHIKODE.**
- 2. THE TAHSILDAR,
REVENUE RECOVERY, VADAKARA, KOZHIKODE.**
- 3. THE CANARA BANK,
VATTOLI BRANCH, REPRESENTED BY ITS MANAGER, VATTOLI
VATAKARA TALUK, KOZHIKODE DISTRICT.**
- 4. PUNJAB NATIONAL BANK,
KUTTIADY BRANCH, REPRESENTED BY ITS MANAGER, KUTTIADY
KOZHIKODE.**

**R3 BY ADV. SRI.E.K.NANDAKUMAR (SR.)
R3 BY ADV. SRI.K.JOHN MATHAI
R3 BY ADV. SRI.P.BENNY THOMAS
R3 BY ADV. SRI.P.GOPINATH
R3 BY ADV. SRI.V.J.ANAND
R3 BY ADV. SRI.P.GOPINATH MENON, SC, CANARA BANK
R4 BY ADV. SRI.K.P.SUDHEER
R4 BY ADV. SRI.V.C.MADHAVANKUTTY
R1 & R2 BY GOVERNMENT PLEADER SRI. P.V. ELIAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PETITIONERS EXHIBITS

EXT.P1. NOTICE DATED 17.5.2006 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: COPY OF THE JUDGMENT DATED 28.9.2007 IN O.S.NO.84 OF 2006 OF THE MUNSIFF'S COURT, NADAPURAM.

EXT.P3: COPY OF THE JUDGMENT DATED 26.3.2009 OF THE SUB COURT, VADAKARA IN AS.NO.67 OF 2007.

EXT.P4: COPY OF NOTICE DATED 17.6.2009 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: COPY OF STATEMENT OF ACCOUNTS OF LOAN ACCOUNT NO.72/93-94 PRODUCED BY THE 4TH RESPONDENT.

EXT.P6: COPY OF STATEMENT OF ACCOUNTS OF LOAN ACCOUNT NO.133/92-93 PRODUCED BY THE 4TH RESPONDENT.

EXT.7: COPY OF REQUISITION FORM FOR LOAN ACCOUNT NO.72/93-94 GIVEN BY THE 4TH RESPONDENT DATED 27.5.2004.

EXT.P8: COPY OF REQUISITION FORM FOR LOAN ACCOUNT NO.133/92-93 GIVEN BY THE 4TH RESPONDENT DATED 27.5.2004.

RESPONDENTS EXHIBITS:

EXT.R4(A): COPY OF BALANCE CONFIRMATION LETTER DATED 8.8.2001 ISSUED BY THE WRIT PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

SKV

C.K.ABDUL REHIM, J

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W.P.(C). No.2808 OF 2010

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Dated this the 19th day of January, 2015

JUDGMENT

The petitioner is challenging Ext.P1 notice issued under Section 36 of the Kerala Revenue Recovery Act, 1968 as well as Ext.P4 letter issued by the 2nd respondent to the Village Officer Kuttiady directing to take steps for attachment of movable properties belonging to the petitioner. The amount sought to be realised under Ext.P1 is Rs.58,883/-. According to the petitioner, the amount pertains to arrears in the loan accounts with respondents 3 and 4. It is stated that when Ext.P1 notice was received the petitioner filed O.S.No.84/2006 before the Munsiff Court, Nadapuram challenging the revenue recovery steps. The suit was dismissed as per Ext.P2 judgment. An appeal filed by the petitioner against Ext.P2 judgment was also dismissed by the Sub Court Vadakara in AS. No.67/2007, vide Ext.P3 judgment.

2. Contention of the petitioner is mainly two folded.

One is that, no notice as required under Section 34 of the Act was issued prior to Ext.P1. It is contended that the petitioner was denied of any opportunity to object the proposal for attachment of immovable property and that the District Collector has not adjudicated and issued any further orders as required under Section 34 before affecting the attachment under Section 36. Another contention raised is that the arrears in the loan accounts remains time barred and that the recovery steps initiated on the basis of Exts.P7 and P8 requisitions, dated 27.5.2004 are unsustainable. According to the petitioner there was no transactions in the accounts since Mach 1999 onwards, as evidenced from Exts.P5 and P6. Hence the revenue recovery steps initiated after the lapse of a period of 3 years cannot be sustained, is the contention.

3. In the counter affidavit filed on behalf of the 4th respondent it is mentioned that the loan availed from the 4th respondent Bank is not remaining time barred as

contended. It is stated that the petitioner had acknowledged the liability through Ext.R4(a) 'balance confirmation letter' executed on 8.8.2001. Learned counsel for the petitioner pointed out that Ext.R4(a) cannot be accepted as a valid acknowledgment of debt, because it was executed only in favour of the Nedungadi Bank Ltd., Kuttiady Branch. But Standing Counsel for the 4th respondent had pointed out that even the document produced in the suit before the Munsiff court, which is listed in Ext.P2 judgment, would indicate that the documents relating to the loan transaction was executed in favour of Nedungadi Bank Ltd. However, learned Counsel for the petitioner contended that Exts.P5 and P6 documents would indicate that there were two loans availed from the 4th respondent Bank and even assuming that R4(a) pertains to one of such loans there is no proof regarding acknowledgment of debt in the other loan.

4. Despite the writ petition remaining admitted as early as in the year 2010 the 3rd respondent had not chosen

to contest the matter by filing any counter affidavit. There is no counter affidavit filed on behalf of respondents 1 and 2 also. Contentions with respect to the unsustainability of the revenue recovery steps based on the plea of limitation remains uncontroverted. So also the contention regarding non issuance of notice under Section 34 also remains uncontroverted, except to the extent of the 4th respondent producing Ext.R4(a) acknowledgment with respect to one of the loans availed from Nedungadi Bank. Even though learned Government Pleader had produced records pertaining to the revenue recovery action no document can be traced out from the records to the affect that any notice as contemplated under Section 34 was served on the petitioner prior to issuance of Ext.P1 notice under Section 36.

5. Under the above mentioned circumstances this court is of the view that the petitioner can be permitted to take all available objections before the 2nd respondent with

respect to unsustainability of the proceedings initiated for realisation of the arrears. The petitioner will submit his objections against the attachment and against the further steps of recovery proposed, treating Ext.P1 as a demand notice issued prior to attachment of land. The petitioner will be at liberty to take all the contentions available, including the contentions regarding bar of limitation. The 2nd respondent shall conduct an enquiry into the said objections, if necessary after affording opportunity to respondents 3 and 4 Banks and shall record a reasoned decision on the said objections before proceeding further with attachment and further steps against the immovable property.

6. If the petitioner submits any objection as directed above before the 2nd respondent within 15 days of receipt of a copy of this judgment, the 2nd respondent shall adjudicate the same as directed above, with opportunity afforded to the petitioner and to the Banks. A decision as directed

above shall be taken at the earliest possible, at any rate within a period of two months from the date of receipt of such objections.

Till such time a decision is taken as directed above, further coercive steps of recovery with respect to the movable and immovable properties of the petitioner shall be kept in abeyance, provided the petitioner submits such objections within the time stipulated.

Accordingly the writ petition is disposed of.

Sd/-
C.K.ABDUL REHIM, JUDGE.

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