

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WA.No. 1551 of 2014 () IN WP(C).13438/2012

AGAINST THE JUDGMENT IN WP(C) 13438/2012 DATED 30-06-2014

APPELLANT(S)/PETITIONER:-

P.A SUBAIR, AGED 45 YEARS
S/O.P.A.ABUBACKER, SUBAIR COTTAGE, KODUNTHIRAPALLY
POODOOR, PALAKKAD DISTRICT, KERALA.

BY ADVS.SRI.SHAHUL HAMEED MOOPPAN
SRI.K.M.VARGHESE

RESPONDENT(S)/RESPONDENTS:-

1. GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, PALAKKAD, PIN - 678 001.
2. TAHSILDAR (RR),
DISTRICT INDUSTRIES CENTRE, PALAKKAD, PIN - 678 001.
3. GOVERNMENT OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.

BY SR. GOVERNMENT PLEADER SRI. P.I. DAVIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 1551 OF 2014

Dated this the 3rd day of February, 2015

JUDGMENT

Shaffique, J.

Petitioner is the appellant who challenges the judgment dated 30.06.2014 in W.P.(C) No.13438 of 2012.

2. The Writ Petition is filed by one of the legal heirs of Sri.P.A.Abubacker, who is a debtor to the Government with reference to a loan taken by him for starting an industrial unit. Sri.P.A. Abubacker expired, and after 15 years, a demand has been made with reference to an amount of Rs.1,63,453/-, being arrears as on 19.07.1991 and interest was also claimed at the rate of 6% per annum.

3. The petitioner has approached the District Industries Center seeking One Time Settlement(for short 'OTS') in terms of Ext.P3 Scheme. According to the petitioner, he is entitled to come under the first or second category of Ext.P3 Scheme. However, the General Manager of District Industries Center, by order dated 15.03.2012, considered his application and included him under category No.III of Ext.P3

Scheme and directed him to pay Rs.55,875/- being the principal amount and 50% of the interest and penal interest which amounted to Rs.55,867/- along with service charges Rs.1,105/- on or before 31.03.2012. Petitioner submits that he has remitted the principal amount of Rs.55,875/- on 09.07.2012 as per the interim order passed by this Court in the Writ Petition.

4. Learned Single Judge having taken note of the aforesaid contentions disposed of the writ petition directing the petitioner to approach the District Industries Center for OTS. It is observed that the petitioner had obtained instalment facility by approaching the Government in this connection and therefore he will be under the obligation to pay the amount due to Government. However, it was observed that the liability of the legal heirs will be limited as such legal heirs who are found to have succeeded to any assets of the deceased Abubacker.

5. Learned counsel for the appellant while impugning the aforesaid judgment submits that he is entitled to OTS in terms of Ext.P3 Scheme and the petitioner will come under the

category I or II. If he comes under category I, he is not liable to pay any amount and if he comes under category II, he can settle the loan account by making a one time payment of the remaining principal amount in lump and the entire interest and penal interest due will be waived.

6. Heard Sri.P.I. Davis, learned Senior Government Pleader as well. The short question to be considered is, under which category the petitioner comes. The categories as per Ext.P3 Scheme which are relevant for this case reads as under:

“CATEGORY No.I:

If the original loanee has expired and the enterprise is defunct and there is no asset at its disposal as well as assets of it does not exist, the entire amount of Principal, Interest and Penal Interest will be written off/waived as a special concession, provided any legal heirs/surviving family member submits application for closure of loan account along with certificate of death issued by the competent authority. Decision of the Director of Industries and Commerce will be final for the purpose.

CATEGORY No. II:

Industrial enterprises which do not exist and are totally defunct and industrial assets are not available will be permitted to settle and close the loan account by making a one time

payment of the remaining principal due in lump. The entire amount of interest and penal interest due will be waived.

CATEGORY No. III:

If the original loanee has expired and the enterprise is functioning, the legal heirs/surviving family members will be permitted to settle and close the loan account by making one time payment of the remaining amount of principal due in lump. 50% of the interest and penal interest due will be waived."

7. Apparently, going by Ext.P2 order passed by the District Industries Center, category III was made applicable and balance amount to be paid by the petitioner was, principal amount and 50% of the interest and penal interest. It is submitted by the appellant that the Unit of appellant's father is not at all functioning and thus had become defunct and no industrial assets are available with him. It is contended that the appellant has only inherited the landed property of the deceased.

8. The claim under category No. I apparently does not apply as it envisages a stage where no assets are available for its disposal and no assets exist, then the entire amount will be written off/waived. Such a situation has not arisen in the case. Therefore, at best the appellant is only entitled for the benefit

under category No.II, which apparently is a question of fact which requires proper adjudication and cannot be done in this proceedings under Article 226 of the Constitution of India.

9. Learned counsel for the petitioner however submits that the petitioner is ready and willing to pay the amount covered by Ext.P2. As the principal amount has already been paid and what remains to be paid is Rs.55,867/- plus Rs.1,105/- towards service charges and having regard to the nature of the contentions urged, especially with regard to the claim of the appellant for being placed under Category No.II and as he has expressed his willingness to remit the entire amount in lump, we are of the view that some time can be granted to the appellant to pay the amount as specified in Ext.P2 order dated 15.03.2012.

Accordingly, this appeal is disposed of modifying the judgment of learned Single Judge by permitting the petitioner/appellant to pay the balance amount of Rs.55,867/-+ Rs.1,105/- within three months from the date of receipt of a copy of this judgment. If the appellant pays the amount, it is declared

WA No. 1551 of 2014

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that the entire liability due in terms of Exts.P1 and P2 shall stand discharged.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**

ttb/04/02