

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 5783 of 2012 (W)

PETITIONER(S):

P.K.CHANDRASHEKARAN AGED 55 YEARS
S/O.KESAVAN, PALACKEL HOUSE, KAITHARAM
PIN-683519.

BY ADV. SRI.K.A.MANZOOR ALI

RESPONDENT(S):

1. THE BRANCH MANAGER,
KERALA STATE FINANCIAL ENTERPRISES LTD.
THRIPUNITHURA BRANCH-695001.
2. THE BRANCH MANAGER,
KERALA STATE FINANCIAL ENTERPRISES LTD.
PANTHALAM BRANCH=689 645.
3. THE ACCOUNTANT GENERAL,
OFFICE OF ACCOUNTANT GENERAL A AND E
THIRUVANANTHAPURAM, PIN-695039.
4. T.P.SIVARAMAN,
DEPUTY DIRECTOR, OFFICE OF DEPUTY DIRECTOR
THIRUVANANTHAPURAM-695001.
5. BIBIN MATHEW,
PEON
C.M.S.HIGH SCHOOL (CHRISTIAN MISSIONARY SOCIETY)
KOTTAYAM-686001.

R1,R2 BY ADV. SRI.P.V.LONACHAN,SC,KSFE LTD.
R BY GOVERNMENT PLEADER SRI LIJU STEPHEN
R BY SRIJOHNSON TJOHN, SC, KSFE LTD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17.12.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.5783/2012

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COPY OF THE NOTICE DT 31.8.2010 ISSUED TO THE PETITIONER

EXT.P2: TRUE COPY OF THE LAWYER NOTICE DT 29.10.2010 ISSUED BY THE PETITIONER

EXT.P3: TRUE COPY OF THE LETTER DT 20.12.2011 ISSUED BY THE RESPONDENT

EXT.P4: TRUE COPY OF THE REPRESENTATION DT 16.1.2012

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 5783 of 2012

Dated this the 17th day of December, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the respondents 1 and 2 are proceeding against the petitioner for recovery of amounts due under a Chitty transaction. Admittedly, the Petitioner and respondents 4 and 5 stood as sureties in a chitty transaction entered into by one Biju Paul, who is said to be now absconding. The said Biju Paul had entered into two chitty transactions with the respondents 1 and 2; for one of which the petitioner and the 4th respondent stood as sureties and for the other, the petitioner and the 5th respondent stood as sureties.

2. On default being committed, the petitioner is proceeded against. The petitioner's case is that the respondents 1 and 2 has not taken any proceedings against respondents 4 and 5. It is also submitted that the petitioner was unaware of the whereabouts of respondents 4 and 5. It is also to be noticed that

despite notice being taken on the 4th respondent several times, it could not be served.

3. Essentially, it is to be observed that the financial transaction between the debtor and the creditor has run into rough weather and the debtor being not traceable, the creditor is entitled to proceed against the sureties. It is also trite that the liability is co-extensive insofar as an original borrower and the sureties are concerned.

4. The learned counsel for the petitioner would submit that there is an element of arbitrariness insofar as the proceedings confined to the petitioner. However, this Court is unable to find such arbitrariness, especially since the law on the subject is very clear and the creditor could proceed against either the original borrower or any of the sureties.

5. Hence the writ petition would have to be dismissed. However, the petitioner would have his remedy to proceed against the other sureties for that portion of dues, the other surety would

be liable and against the original borrower for the entire dues satisfied by the petitioner. For satisfaction of the dues, the petitioner shall be given ten installments, the petitioner shall be permitted to clear off the arrears in ten installments starting from 18.01.2016 and followed up on the 18th of each succeeding month. The petitioner shall be served with a statement of accounts as on 31.12.2015. If default is committed in two consecutive installments, then the recovery proceedings shall revive and continue. On the satisfaction of the dues as per the statement, the respondent shall give a statement of the future interest and the same shall be settled as the 11th installment.

The writ petition is disposed of with liberty reserved as herein above indicated.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge