IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 4926 of 2013 (M)

PETITIONER(S):

K.P. MARY, AGED 47 YEARS, W/O.JOSEPH,
KOCHIPARAMBIL HOUSE, KOMBAYAR P.O.,
IDUKKI DISTRICT.

BY ADVS.SRI.S.SACHITHANANDA PAI,
SMT.K.S.JEENA REETHA.

RESPONDENT(S):
----

1. THE NEDUMKANDOM SERVICE CO-OPERATIVE BANK LTD. NO.K.326, NEDUMKANDOM P.O., PIN-685 553, IDUKKI DISTRICT.

2. CHINNAMMA MATHEW, W/O.LATE MATHEW, BLOCK NO.1323, KOMBAYAR P.O., PIN-685 552, IDUKKI DISTRICT.

R1 BY ADV. SRI.S.DILEEP (KALLAR).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 4926 of 2013 (M)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 **COPY OF THE TREATMENT CERTIFICATE ISSUED BY SREE CHITIRA TIRUNAL INSTITUTE FOR MEDICAL SCIENCE AND TECHNOLOGY.**

EXT.P2 **COPY OF THE RECOVERY PROCEEDINGS OF THE 1ST RESPONDENT BANK DATED 15/01/2013.**

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.4926 of 2013

Dated this the 25th day of March, 2015

JUDGMENT

The petitioner, who is a co-obligant to a loan transaction, has approached this Court for a direction to the respondent bank to proceed against the petitioner only after exhausting the remedies against the principal debtor.

2. The petitioner is a last grade servant in the Education Department. She had undergone an open heart surgery at Sree Chithira Thirunal Institute for Medical Science and Technology, Thiruvananthapuram in the year 1986. In the year 1993, she obtained a loan of ₹10,000/- from the first respondent bank. Apart from that, she stood as a guarantor to the loan amount of ₹1,50,000/- to one Mathew who is now no more. The loan obtained by Mathew was not repaid by him. The 2nd respondent is the wife of Mathew. Mathew owned property having an extent of 2.5 Acres comprised in Sy.No.429/1 of Udumbanchola

Taluk, Parathodu Village. The property is cultivated with cardamom and pepper. The said property is now inherited by the second respondent. Since the loan became overdue, the first respondent bank initiated recovery proceedings only against the petitioner. The first respondent bank did not initiate any legal proceedings to recover the amount from the property of deceased Mathew. The petitioner and her family is residing in a rented house. The second respondent has sufficient property and income to repay the loan amount. The petitioner is only a guarantor to the loan transaction and now, the first respondent bank has turned to the petitioner without initiating any recovery proceedings against the second respondent.

3. Arguments have been heard.

4. The learned standing counsel for the respondent bank, on instructions, submitted that the property of the principal borrower, the deceased husband of the second respondent was subjected to an attachment in respect of a loan availed by him from another bank. Therefore,

according to the first respondent bank, the property in the hands of the second respondent is not sufficient to wipe of the entire liability and they have no other way to proceed against the property of the petitioner.

It is settled law that the liability of the co-obligant is co-extensive with the principal debtor. As long as the first respondent has not denied the averment in the writ petition that the second respondent is having sufficient properties to get the loan amount realised, this writ petition is disposed of directing the first respondent to proceed against the petitioner, only if the first respondent is convinced that they are not in a position to realise debt due from any of the assets left by the deceased husband of the petitioner. If the said properties are available for realisation of the debt due to the first respondent, the first respondent shall proceed against the said properties first.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/ true copy

P.S.TO JUDGE