

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 2657 of 2015 (F)

PETITIONER(S):

**SREE GOKULAM CHIT & FINANCE CO.PVT.LTD.,
REGISTERED AND CORPORATE OFFICE AT 66, ARCOT ROAD,
KODAMBAKKAM, CHENNAI - 24, TAMIL NADU,
HAVING ONE OF IT'S DIVISIONAL OFFICE AT BISMI TOWERS,
KALLAI ROAD, KOZHIKODE,
REPRESENTED BY IT'S MANAGING DIRECTOR, A.M.GOPALAN,
AGED 69 YEARS, S/O.CHATHU, RESIDING AT AMBALATHIL MEETHAL,
CHENNAI - 24.**

**BY ADVS.SRI.K.S.BABU
SMT.N.SUDHA
SRI.BABU SHANKAR**

RESPONDENT(S) :

- 1. DISTRICT COLLECTOR,
MALAPPURAM, CIVIL STATION BUILDING,
MALAPPURAM, PIN - 676 505.**
- 2. THE TAHSILDAR,
TALUK OFFICE, TIRUR - 676 106.**
- 3. FAISAL RAHIMAN,
S/O.KANMALLI ABDUL RAHIMAN,
RESIDING AT HOUSE NO.9/62, THANALLOOR, PONMUNDAM P.O,
PIN CODE- 676 106, AREKKAD DESOM, TANALLOOR AMSOM,
TIRUR TALUK.**
- 4. STATE BANK OF TRAVANCORE,
PULPARAMBA BRANCH, 2ND FLOOR, SHALIMAR COMPLEX,
VYLATHUR, PONMUDAM P.O., MALAPPURAM DISTRICT, PIN- 676 106.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.SHYSON.P.MANGUZHA
R4 BY ADV. SRI.T.SETHUMADHAVAN (SENIOR ADVOCATE)
ADVS. SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COMPUTER PRINT OUT OF THE MONTHLY LEDGER OF CHIT ACCOUNT G2J/0738/KDM/18 SUBSCRIBED BY THE 3RD RESPONDENT.

EXHIBIT P1(A): TRUE COMPUTER PRINT OUT OF THE MONTHLY LEDGER OF CHIT ACCOUNT NO.G2J/0738/KDM/20 SUBSCRIBED BY THE 3RD RESPONDENT.

EXHIBIT P1(B): TRUE COMPUTER PRINT OUT OF THE MONTHLY LEDGER OF CHIT ACCOUNT NO.G2J/0739/KDM/07 SUBSCRIBED JUNAIS RAHIMAN, BROTHER OF THE 3RD RESPONDENT.

EXHIBIT P2: TRUE PHOTOSTAT COPY OF THE MEMORANDUM OF DEPOSIT OF TITLE DEEDS SIGNED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER.

EXHIBIT P2(A): TRUE PHOTOSTAT COPY OF THE MEMORANDUM OF DEPOSIT OF TITLE DEEDS SIGNED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER.

EXHIBIT P3: THE TRUE PHOTOSTAT COPY OF THE NOTICE DATED 11.11.2014 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 36 OF THE KERALA REVENUE RECOVERY ACT.

EXHIBIT P4: THE TRUE PHOTOSTAT COPY OF THE NOTICE UNDER SECTION 49(2) OF KERALA REVENUE RECOVERY ACT ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.2657 of 2015

.....
Dated this the 19th day of March, 2015

J U D G M E N T

The petitioner who had advanced amounts to the 3rd respondent had obtained the mortgage over an item of property that was under the ownership of the 3rd respondent as a security for the loan advanced. It is the case of the petitioner that while the mortgage over the property in question still subsists, and the petitioners have a charge over the said property, proceedings have now been initiated under the Kerala Revenue Recovery Act, against the said property at the instance of the 4th respondent, to whom also the 3rd respondent is indebted. The revenue recovery proceedings have currently reached the stage of issuance of a notice of sale, as borne out by Ext.P4 notice produced along with the writ petition. The contention of the petitioner in the writ petition is that although, the loan advanced by the 4th respondent to the 3rd respondent was earlier in point of time, than the loan advanced by the petitioner to the 3rd respondent, it was in the latter transaction that the property was mortgaged to the petitioner as collateral security, and there was no mortgage of the said property in favour of the 4th respondent. Thus it is the case of

the petitioner in the writ petition that, its charge over the property being a superior one, had to be taken note of, before effecting a sale of property in accordance with the provisions of the Kerala Revenue Recovery Act.

2. I have heard Smt.N.Sudha, the learned counsel for the petitioner and Sri.K.Jayesh Mohan Kumar, the learned Standing counsel for the 4th respondent bank and Sri.Shyson P.Manguzha, the learned Government Pleader for the 1st and 2nd respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that inasmuch as the petitioner has a claim regarding a superior charge over the property in question, and the determination of the issue would require an examination of factual aspects, the petitioner should be relegated to the remedy of preferring a claim before the 1st respondent in accordance with Section 46 of the Kerala Revenue Recovery Act, even though the proceedings under the said Act have now reached the stage of issuance of sale notice under Section 49 (2) of the Act. Thus, I dispose the writ petition with the following directions:

- i. If the petitioner prefers a claim petition before the 1st respondent within a period of

two weeks from today, then the 1st respondent shall consider the petition as one under Section 46 of the Kerala Revenue Recovery Act and pass orders in the same after hearing the petitioner and the 4th respondent bank. The 1st respondent shall ensure that notice of hearing is given to both, the petitioner and the 4th respondent bank, sufficiently in advance so as to enable them to attend the hearing.

ii. The 1st respondent shall pass orders as directed within a period of two months from the date of receipt of a copy of this judgment.

iii. The interim order of stay, against further proceedings pursuant to Ext.P4 notice, granted by this Court shall continue to be in operation till such time as the 1st respondent passes orders as directed above and communicates the same to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

