

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 6751 of 2010 (T)

PETITIONER:

C.REJARAM,DIRECTOR,
M/S.ANDERSON INDUSTRIES INTERNATIONAL LTD.
NO.1.PILLAIYARKOIL STREET, MANAPAKKAM CHENNAI.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENT(S):

1. RECOVERY OFFICER,
ASSISTANT COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANISATION
SUB REGIONAL OFFICE, OLD MUNICIPAL OFFICE BUILDING
CHINNAKKADA, KOLLAM.
2. ASSISTANT PROVIDENT COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION
SUB REGIONAL OFFICE, OLD MUNICIPAL OFFICE BUILDING
CHINNAKKADA, KOLLAM.
3. SRI.S. CHAKKOCHAN, PROPRIETOR,
AKSHAYA CASHEW COMPANY, HOUSE NO.43, SAMRUDHI NAGAR
ASRAMOM P.O, KOLLAM.
4. SRI.PEPSIN RAJ,
PROPERITOR, M/S.THAMPURAN CASHEW, GOURI VILAS
KADAPPAKADA, KOLLAM.

R1,2 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR,SC,EPF ORGN
R3 BY ADV. SRI.C.RAJENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO.6751 OF 2010

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COPY OF THE RELEASE OF LEASE DATED 10.03.2006 EXECUTED BY A.P NAZIMUDDIEN IN FAVOUR OF THE PETITIONER

EXT.P2: TRUE COPY OF THE LEASE AGREEMENT DT 9.3.2006 EXECUTED BETWEEN THE PETITIONER AND THE 3RD RESPONDENT

EXT.P3: TRUE COPY OF THE NOTICE DATED 3.2.2009 ISSUED TO THE PETITIONER, RESPONDENTS' 3 TO 4 AND ALSO THE FORMER LESSEE SRI A P NIZAMUDDIN

EXT.P4: TRUE COPY of the DEMAND NOTICE DATED 9.2.2010 ISSUED BY THE 1ST RESPONDENT

EXT.P5: TRUE COPY OF THE REPRESENTATION DT 22.2.2010 SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

K. VINOD CHANDRAN, J

W.P(C) No. 6751 of 2010

Dated this the 09th day of April, 2015

J U D G M E N T

The petitioner is aggrieved with the demand made as per Ext.P4. Admittedly, the petitioner is a long term lessee of the premises in which a cashew factory is situated. The petitioner does not produce the lease agreement, but, however, contends that the petitioner was in possession of the same for a long period under a lease and that, as authorised by the lease agreement he had subleased the premises to various other persons.

2. The relevant period is October, 2006-2007 when the petitioner specifically contends that the 3rd respondent was in possession, as per a sub-lease granted by him. The petitioner's grievance is insofar as Ext.P4 demand having been issued only against the petitioner and two other persons who are not in possession of the premises in the relevant period. Admittedly, the petitioner was issued with Ext.P3 notice in which the 3rd respondent

is also shown as the 4th addressee. The other two persons shown in Ext.P3 notice were in possession for different periods for which period the said persons are said to have satisfied the contribution. The petitioner hence contends that the proceedings are to be taken against the 3rd respondent and not against the petitioner herein for reason of the petitioner having subleased the premises to the 3rd respondent during the relevant period.

3. I have heard the learned counsel for the petitioner, the learned Standing counsel for the respondent Organisation as also the 3rd respondent.

4. The learned counsel for the 3rd respondent would contend that no notice of demand has been issued as against him and there is no assessment order also produced along with the writ petition. The learned Standing Counsel for the Organisation relies on Section 17B to contend that the transferor and the transferee has a joint liability to satisfy the contribution. It is an admitted fact that the petitioner was in possession of the premises and it was the petitioner who was the transferor by which the 3rd respondent

came into possession of the property purportedly on the strength of a sublease. In any event, the petitioner having admitted himself to be the transferor of the property, the liability as mulcted under Section 17 B cannot be escaped from.

5. It is also pertinent that the petitioner has failed to produce the assessment order allegedly for reason of the same having not been issued to the petitioner. A notice of demand has been issued, specifically in the name of the petitioner along with others. The petitioner should have sought for a copy of the assessment order and produced it along with the writ petition. The assessment made against the petitioner also has not been challenged before the statutory forums. The assessment order has now become final. Section 17 B effectuates, statutorily, a joint and several liability on the transferor and the transferee. Any agreement between the parties and claims arising therefrom would have to be agitated before the appropriate forum, between such parties. The statutory organisation cannot be fettered by any such agreement between the transferor and the transferee,

especially in view of the joint and several liability. The statutory liability created on the transferor cannot be lightly interfered with.

6. The petitioner definitely would have to satisfy the demand, but, however if the contention is that the 3rd respondent has, by a sublease occupied the premises and operated the establishment; then the petitioner would have left the remedies before the appropriate forum for recovery from the 3rd respondent. It is also made clear that if any orders have been passed against the 3rd respondent, the present judgment does not preclude the respondent organisation from proceeding against the 3rd respondent also.

With the above reservation of rights, the writ petition would stand dismissed. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge