

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 3622 of 2014 (C)

PETITIONER:

SATHEESAN E.B., AGED 47 YEARS,
S/O.BHARATHAN, PEON, PRIMARY HEALTH CENTRE,
VELLANGALLOOR, KONATHUKUNNU P.O., THRISSUR.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENTS:

1. THE MANAGER,
THE THRISSUR DISTRICT CO-OPERATIVE BANK,
AYYANTHOLE BRANCH, THRISSUR, PIN-680 003.
2. THE GENERAL MANAGER,
THRISSUR DISTRICT CO-OPERATIVE BANK, THRISSUR,
PIN-680 003.
3. THE MEDICAL OFFICER,
PRIMARY HEALTH CENTRE, VELLANGALLUR, KONOTHUKUNNU P.O.,
THRISSUR, PIN-680 123.
4. K.A.LAILA,
NURSING ASSISTANT GR.II, DISTRICT HOSPITAL, THRISSUR,
PIN-680 004.

R1,R2 BY ADV. SRI.C.A.MAJEED, SC, THRISSUR DISTRICT CO.OP. BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 3622 of 2014 (C)

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE LETTER DATED 21.11.2013 OF 1ST RESPONDENT BANK.

P2: COPY OF THE REPRESENTATION MADE BY THE PETITIONER DATED 20.01.2014 BEFORE THE RESPONDENT BANK.

P3: COPY OF THE DECISION REPORTED IN 2011(3) KHC 373.

RESPONDENTS' EXHIBITS:

EXT.R2(A): PHOTOCOPY OF THE REGISTERED NOTICE SENT BY THESE RESPONDENTS DATED 20.05.2002.

EXT.R2(B): PHOTOCOPY OF THE LETTER FROM THE LAW SECRETARY AND TREASURER, GOVERNMENT HOSPITAL THRISSUR DATED 31.05.2002.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 3622 of 2014 (C)

Dated this the 27th day of November, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank, apart from perusing the record.

2. In this writ petition, the petitioner, a guarantor to a loan obtained by the 4th respondent, has a grievance that the respondent Bank has been proceeding against him alone, leaving out the principal borrower.

3. At any rate, when confronted with the recent order of this Court in R.P. No. 856 of 2015 in W.P.(C) No. 29304 of 2013 that it is the prerogative of the creditor, the learned counsel for the petitioner has submitted that this writ petition too can be disposed of applying the same ratio, but liberty may be given to the petitioner, the guarantor, to take appropriate recovery steps, if necessary, against the principal borrower.

Needless to observe that once statute provides—indeed Sections 140 and 141 of the Contract Act do provide—it needs no further restatement by this Court concerning the rights of sureties

against the principal borrower.

4. In the facts and circumstances, following the ratio laid down in the order dated 14.10.2015 in R.P. No. 856 of 2015 in W.P.(C) No. 29304 of 2013, this Court dismisses the writ petition.

This Court, however, makes it clear that it is entirely open for the petitioner to take appropriate steps vis-a-vis the principal borrower, as has been indicated in the order referred to above. The respondent Bank may also consider the petitioner's Ext.P2 representation in accordance with law.

sd/- DAMA SESHADRI NAIDU, JUDGE.

