IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY,THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 6358 of 2014 (T)

PETITIONER : -

K.S. SIVAPRASAD, AGED 52YEARS,
S/O.SANKARANARAYANA PILLAI, PRASANTH BHAVAN,
AZHYIDATHUCHIRA P.O., THIRUVALLA,
PATHANAMTHITTA.(SR.TOA
AT THE OFFICE OF GENERAL MANAGER, TELECOM, BSNL,
THIRUVALLA).

BY ADVS.SRI.R.SANTHOSH BABU
SRI.C.G.SALIM

RESPONDENTS :-

----

1. SECRETARY,
THE THIRUVALLA GOVERNMENT EMPLOYEES' CO-OPERATIVE BANK
LTD NO. A. 213, THIRUVALLA-689101.

2. THE ASSISTANT REGISTRAR,
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
REVENUE TOWER, THIRUVALLA-689101.

3. THE DEPUTY GENERAL MANAGER (FINANCE),
O/O.GMT.BSNL, THIRUVALLA, PIN 689101.

4. VIJAYAKUMAR.K, AGE AND FATHER'SNAME NOT KNOWN,
MULAVANA, PALIAKKARA, THIRUVALLA,
PATHANAMTHITTA DISTRICT, PIN 689101.

5. MURALEEDHARAN NAIR E.V.,
AGE AND FATHER'S NAMENOT KNOWN,
EDANATTU PADINJATTETHIL, VAZHAMUTTAM, OMALLOOR,
PATHANAMTHITTA, PIN 689103.

R3 BY ADV. SMT.I.SHEELA DEVI,SC,BSNL(BSNL)
R1 BY ADV. SRI.P.C.SASIDHARAN
R4 BY ADV. SRI.K.N.RADHAKRISHNAN(THIRUVALLA)
BY Sr. GOVERNMENT PLEADER SRI. M. MOHAMMED SHAFI
BY SRI.MATHEWS K.PHILIP,SC, BSNL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6358 of 2014 (T)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT-P1: TRUE COPY OF ORDER NO.X-1/DGM (CFA/PTA/2011-12/14 DATED 7.2.2012 ISSUED BY DEPUTY GENERAL MANAGER (CFA) PATHANAMTHITTA.

EXHIBIT-P2: TRUE COPY OF LETTER DATED 28.2.2014 ISSUED BY 1ST RESPONDENT.

EXHIBIT-P3: TRUE COPY OF REQUEST DATED 1.3.2014 OF PETITIONER TO 2ND RESPONDENT.

EXHIBIT-P4: TRUE COPY OF DISCHARGE CARD ISSUED BY THIRUVALLA MEDICAL MISSION HOSPITAL DATED 29.7.2013.

EXHIBIT-P5: TRUE COPY OF SCHEDULE OF RECOVERY FOR THE PERIOD FEBRUARY 2014.

RESPONDENTS' EXHIBITS : -

EXHIBIT R1(a) : COPY OF THE LOAN APPLICATION ALONG WITH LOAN AGREEMENT.

EXHIBIT R1(b) : COPY OF THE SALARY CERTIFICATE OF THE PETITIONER.

EXHIBIT R1(c) : COPY OF THE LOAN APPLICATION ALONG WITH LOAN AGREEMENT.

EXHIBIT R1(d) : COPY OF THE SALARY CERTIFICATE OF THE PETITIONER.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 6358 of 2014

Dated this the 31st day of August, 2015

JUDGMENT

The petitioner is a guarantor to the loans taken by the fourth and fifth respondents from the first respondent, the Employees Co-operative Bank. In the course of time, having committed default in repaying the loan amounts, both fourth and fifth respondents have been compulsorily retired as a consequence to the disciplinary proceedings initiated against them on a different count though.

2. The grievance of the petitioner is that though there are terminal benefits due to the fourth and fifth respondents lying with the employer; the first respondent, instead, has initiated recovery proceedings only against the petitioner, the guarantor.

3. The learned counsel for the petitioner has submitted that the fourth and fifth respondents obtained loans from the first respondent Co-operative Bank and later committed

default. It is the specific contention of the learned counsel for the petitioner that the employer, Bharat Sanchar Nigam Limited, has to pay huge amounts to the fourth and fifth respondents towards the settlement of their terminal benefits.

4. Despite the fact that the petitioner has already pointed out to the first respondent Bank, and the employer as well, that the loan amounts could be adjusted from and out of the fourth and fifth respondents' terminal benefits, neither of them has taken any action in that regard.

5. The learned counsel has further submitted that, without any justification, the first respondent has been recovering the loan amounts only from the salary of the petitioner on a monthly basis. Eventually, the learned counsel has contended that the petitioner has submitted Exhibit P3 request before the second respondent, it has not been considered on merits.

6. The learned counsel for the first respondent Co-operative Bank has submitted that the liability of the petitioner is joint and several, and that there is no illegality in the approach of the first respondent in effecting recovery

from the petitioner's salary. She has further submitted that as regards the terminal benefits due to the fourth and fifth respondents, there is a statutory embargo against the recovery from those benefits.

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

8. Indeed, there is not much factual controversy in the matter; on the other hand, the issue lies in a narrow compass. It is well established in terms of Section 128 of the Contract Act that the liability of the guarantor is co-extensive with that of the principal borrower. The creditor has the option of initiating recovery proceedings either against the principal borrower or against the guarantors or all of them together. In other words, the liability is joint and several.

9. So long as a statute permits such a procedure of recovery against the guarantor to the exclusion of the principal borrower, this Court, in the name of equity, cannot interfere with the validly initiated recovery proceedings. It is axiomatic to observe that equity gives way to statutory mandate.

10. At any rate, the fact remains that the first respondent has not considered the petitioner's Exhibit P3 request. It suffices if the writ petition is disposed of with a direction to the first respondent to consider petitioner's Exhibit P3 representation in accordance with law, and pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

It is further made clear that no observation made presently shall come in the way of the first respondent's recovery of the loan amount from the salary of the petitioner, who, in fact, has an efficacious remedy *vis-a-vis* the fourth and fifth respondents.

DAMA SESHADRI NAIDU
JUDGE

DMR/-