IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 9650 of 2015 (E)

PETITIONER:

E.D. VILASINI, AGED 54 YEARS,
W/O. LATE K.A.KUNJU PILLAI, SELECTION GRADE TYPIST,
COMMERCIAL TAX OFFICE, PATHANAMTHITTA,
FINANCIAL COMPLEX, 2ND FLOOR, PATHANAMTHITTA - 689 645.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENTS:
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1. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MINI CIVIL STATION,
PATHANAMTHITTA - 689 645.

2. THE SECRETARY,
KERALA STATE TAXES EMPLOYEES CO-OPERATIVE SOCIETY LTD.
NO. T 716, SREEKANDESWARAM,
THIRUVANANTHAPURAM - 695 001.

3. SURENDRAN B,
CLERK, INTELLIGENCE OFFICE, COMMERCIAL TAXES,
PATHANAMTHITTA - 689 645.

R2 BY ADV. SRI.SAJU.S.A
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

P1 - TRUE PHOTOSTAT COPY OF THE SALARY CERTIFICATE OF THE PETITIONER DT. 20.3.15.

P2 - TRUE PHOTOSTAT COPY OF THE AUTHORISATION ISSUED TO THE 1ST RESPONDNET BY THE 2ND RESPONDENT DT. 25.2.15 TO RECOVER RS.10,000/- PER MONTH FROM THE SALARY OF THE PETITIONER.

P3 -TRUE PHOTOSTAT COPY OF THE ORDER OF THE ASSISTANT COMMISSIONER - I, COMMERCIAL TAXES, THIRUVANANTHAPURAM DT. 11.2.14.

RESPONDENTS' EXHIBITS:

EXHIBIT R2(a): TRUE COPY OF LETTER DATED 03.03.2014 ISSUED BY THE COMMISSIONER TAX INSPECTOR, COMMERCIAL TAXES CHECK POST VETTILAPPARA.

EXHIBIT R2(b): TRUE COPY OF NOTICE DATED 28.04.2015 ISSUED BY THE KERALA STATE HUMAN RIGHTS COMMISSION.

/True Copy/

P.A to Judge.

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 9650 of 2015 (E)

Dated this the 17th day of September, 2015.

JUDGMENT

The petitioner, an employee of the Department of Commercial Taxes, availed herself of a loan for ₹ 2,00,000/-, apart from standing as a guarantor for two other borrowers. In the course of time, she cleared her loan, but not the other two borrowers for whom she stood guaranty. Under those circumstances, the second respondent society initiated recovery proceedings against the petitioner, the guarantor. Aggrieved, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner submits that insofar as the two other borrowers are concerned, the third respondent is still in service and despite that the second respondent Bank has not initiated any steps to recover the dues from his salary. According to him, the other borrower, though died in harness, while in service gave an authorisation to the employer to effect recovery of the loan from his terminal benefits.

3. In sum and substance, it is the contention of the learned counsel for the petitioner that without initiating recovery proceedings against the principal borrowers, who have sufficient means, be it salary or terminal benefits, it is entirely impermissible for the second respondent Bank to single out the petitioner for recovery by way of deduction from her salary. In support of his submissions, the learned counsel has placed reliance on **Rehima Beevi v. Rajan**[1], a judgment rendered by a learned Division Bench of this Court.

4. Per contra, the learned counsel for the second respondent has firstly submitted that it is the prerogative of the creditor to effect recovery either against the principal debtor or the guarantor or even all of them together. According to him, the law is well settled that the guarantor from whom the recovery has been effected will have further recourse to recover the amounts from the principal borrower.

5. The learned counsel has submitted that the ratio of the decision of this Court in **Rehima Beevi** (supra) cannot be relied on by the petitioner for the reason that very recently in **Central**

[1] 2011(3) KLT 625

Bank of India v. C.L. Vimala & others[2] the Hon'ble Supreme Court has held that it is the prerogative of the creditor to effect recovery from any of the parties to the loan.

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

7. Indeed, the facts are not in dispute. The petitioner stood guarantee for the loan obtained by two other employees, one of them being the third respondent. As can be seen, the singular grievance of the petitioner is that the second respondent ought not to have initiated recovery proceedings only against the guarantor, the petitioner, leaving aside the principal borrowers. The record reveals that one of the borrowers died, but his terminal benefits are yet to be settled by the department. On the other hand, the third respondent is still in service.

8. If we examine the defence on the part of the second respondent, it emerges that it has initially raised a contention that it is the prerogative of the creditor to initiate recovery proceedings

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in the alternative; that is, against either the principal borrower or the guarantor or all of them together. Nevertheless, the learned counsel, in tune with the averments in the counter affidavit, has submitted that the respondent Society has been making all efforts to ensure recovery from the third respondent and also from the terminal benefits of the deceased employer.

9. In elaboration, the learned counsel has submitted that, despite its efforts to recover form the third respondent, the fact remains that the very third respondent is in charge of the particular section that receives and processes the request of the respondent Society concerning loan recovery from the salary. The third respondent has eventually, according to the learned counsel, complained to the higher authorities; and now based on the directions issued by the higher authorities, the respondent Bank has already begun recovery from the salary of the third respondent as well.

10. Concerning the deceased borrower, the learned counsel for the respondent Society has submitted that though the respondent Society has been communicating with the department,

so far, owing to various procedural delays, the said employee's terminal benefits have not yet been finally settled and disbursed. In that context, the learned counsel asserts that the respondent Society does not shy away from its contractual rights of recovery against the estate of the deceased employee, too.

11. Though the learned counsel has placed reliance on **Rehima Beevi** (supra), I am afraid the learned Division Bench therein has not laid down any ratio to the effect that the creditor cannot proceed against the guarantor without initially taking steps to recover from the principal debtor. Indeed, in terms of Section 128 of the Indian Contact Act, the liability on the part of the principal borrower and the guarantors is always co-extensive, apart from being joint and several.

12. It is well established that based on the ease of realisation, the creditor could choose an appropriate method of recovery; statutory mandate cannot be stifled on the principle of either equity or morality. This Court cannot compel the creditor to choose a particular method of recovery.

13. Though the learned counsel for the respondent Society,

on his part, has relied on **Vimla** (supra), the said decision of the Hon'ble Supreme Court, however, proceeds entirely on a different premise and decides altogether a different issue. It is not connected even remotely with that of the creditor's option to have recovery either from the principal borrower or from the guarantors.

14. Be that as it may, the statute is clear to the effect that it is at the option of the creditor; but not as per the demand of the debtor, be the principal borrower or the guarantor.

15. Taking into account the totality of the circumstances, this Court, nevertheless, appreciates the efforts of the respondent Society in taking diligent steps for recovery from both the principal borrower and the estate of the deceased employee, as well.

16. At this juncture, the learned counsel for the petitioner has submitted that the deductions made from the salary of the petitioner are highly excessive, and it should be scaled down. He has further submitted that the petitioner will submit a representation to the second respondent Society, which may consider that sympathetically.

17. Without expressing any opinion on the issue, this Court leaves it open for the petitioner to make a representation as he desires; and in such an event, it is entirely open for the respondent Society to take appropriate decision in that regard.

With the above observations, the writ petition is disposed of. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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