IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

WP(C).No. 10717 of 2015 (L)

PETITIONER(S) :

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1. JAYSON JOY M.J., AGED 39 YEARS,
   S/O.M.V.JOY, RESIDING AT MANTHOTTATHIL HOUSE,
   THEKKEDESAM, CHITTUR, PALAKKAD DISTRICT.

2. JOB JOY, AGED 37 YEARS,
   S/O.M.V.JOY, RESIDING AT MANTHOTTATHIL HOUSE,
   THEKKEDESAM, CHITTUR, PALAKKAD DISTRICT.

   BY ADVS.SRI.DEVAN RAMACHANDRAN
   SRI.ADARSH KUMAR
   SRI.BIJU VARGHESE ABRAHAM

RESPONDENT(S) :

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1. DISTRICT COLLECTOR,
   PALAKKAD- 678 014.

2. KERALA FINANCIAL CORPORATION,
   REPRESENTED BY ITS MANAGING DIRECTOR, HEAD OFFICE,
   VELLAYAMBALAM, THIRUVANNATHAPURAM- 695 001.

3. SPECIAL DEPUTY TAHSILDAR,
   KERALA FINANCIAL CORPORATION, PALAKKAD- 678 014.

   R2 BY ADV. SRI.T.V.GEORGE, SC, KFC
   R1 & R3 BY GOVERNMENT PLEADER SMT.M.T.SHEEBA

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
   ON 22-06-2015, THE COURT ON THE SAME DAY DELIVERED
   THE FOLLOWING:

Msd.

WP(C).No. 10717 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE LETTER DATED 18-02-2011.

EXHIBIT P2: TRUE COPY OF THE TERMS AND CONDITIONS GERMANE TO THE INITIAL TERM LOAN OF RS.250 LAKHS TO M/S SHALOM MICRO FINANCE LTD.,

EXHIBIT P2A: TRUE COPY OF THE TERMS AND CONDITIONS GERMANE TO THE ADDITIONAL TERM LOAN OF RS.250 LAKHS TO M/S.SHALOM MICRO FINANCE LTD.

EXHIBIT P3: TRUE COPY OF THE CERTIFICATE OF INCORPORATION UNDER THE NAME AND STYLE 'M/S PARKLAND FINANCE AND INVESTMENTS PRIVATE LIMITED'.

EXHIBIT P4: TRUE COPY OF THE CERTIFICATE OF INCORPORATION UNDER THE NAME AND STYLE, PARKLAND FINANCE AND INVESTMENTS LTD.

EXHIBIT P5: TRUE COPY OF THE CERTIFICATE OF INCORPORATION UNDER THE NAME AND STYLE SHALOM MICRO FINANCE LIMITED.

EXHIBIT P6: TRUE COPY OF THE CERTIFICATE OF REGISTRATION GRANTED TO M/S SHALOM MICROFINANCE LIMITED TO CARRY ON THE BUSINESS OF NON BANKING FINANCIAL INSTITUTION BY THE RESERVE BANK OT INDIA

EXHIBIT P7: TRUE COPY OF THE NOTICE OF ATTACHMENT DATED 31-01-2014.

EXHIBIT P8: TRUE COPY OF THE NOTICE OF ATTACHMENT DATED 12-11-2013.

EXHIBIT P9: TRUE COPY OF THE SALE NOTICE DATED 12-06-2014.

EXHIBIT P10: TRUE COPY OF THE NOTICE OF ARREST DATED 18.03.2015.

EXHIBIT P11: LEGAL NOTICE CAUSED ON BEHALF OF THATHAMANGALAM CO-OPERATIVE SERVICE BANK TO THE 3RD RESPONDENT DATED 04-08-2014.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 10717 of 2015

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Dated this the 22nd day of June, 2015

J U D G M E N T

The petitioners challenge Exhibit P10 order under Section 65 of the Kerala Revenue Recovery Act.

2. The petitioners are Promoters-Directors of M/s.Shalom Micro Finance Ltd; which is a Public Limited Company. The Company availed credit facilities from the KFC. The Company engaged in Micro Finance. On account of non-payment of the loan amount, which is now more than Rs.3 crores, the revenue recovery proceedings have been initiated by the 2nd respondent. The petitioners are issued with show cause notice. The petitioners have two fold contentions before this court.

(i) They being the sureties, they cannot be proceeded under Revenue Recovery Act for arrest and detention.

(ii) They have no means to pay the amount as demanded.

3. The petitioners contended that they cannot be arrested for the reason that they are sureties and Section 67 would indicate the power of arrest and detention cannot be invoked against the sureties. Section 67 provides as follows:

> "67. Mode of enforcing payment by sureties:- All the remedies prescribed by this Act in respect of defaulters of public revenue due on land except the power of arrest and detention in prison may be employed against their sureties, and the Collector or the authorised officer may enforce the same simultaneously with, or either previously or subsequently to, their enforcement against the principal, so nevertheless that not more than the total sum in arrears and interest and cost of process shall be realised from both."

4. The petitioners submit that in the teeth of language used in Section 67, the power of arrest and detention cannot be invoked against the petitioners. Essentially, the question is the interpretation of Section 67 with reference to the nature of guarantee given by the petitioners. Further the Sections 65 and 67 clearly indicate that there must be a wilful and fraudulent non-payment of the arrears. Therefore the question also need to be addressed whether the petitioner has any means to pay the entire amount and they have wilfully or fraudulently withheld any such payment.

5. I am of the view that in such circumstances, the objection of the petitioners shall be adverted to by the District Collector. In that view of the matter, a final order has to be passed by the District Collector after adverting to the objection of

the petitioners. The present impugned order is treated as only a show cause notice. The petitioners shall raise objection within three weeks. Thereafter after issuing notice to the petitioners and Corporation, final orders shall be passed within a further period of six weeks. Till the final order is passed, no arrest shall be effected against the petitioners. It is made clear that, if the final order is passed and it is decided to proceed against the petitioner, that order shall be kept suspended for a period of two weeks after communication of the order to enable the petitioner to work out alternate remedy.

The writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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