

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 16243 of 2015 (E)

PETITIONER(S):

1. ABDUL GAFOOR, AGED 73 YEARS,
S/O.ABDUL AZIZ, KANDANCHIRA PALACE, DALI P.O,
KULATHUPUZHA, KOLLAM DISTRICT.
2. SURATH GAFOOR, AGED 67 YEARS,
W/O.ABDUL GAFOOR, KANDANCHIRA PALACE, DALI P.O,
KULATHUPUZHA, KOLLAM DISTRICT.
3. SAJEENA A, AGED 44 YEARS,
D/O.ABDUL GAFOOR, KANDANCHIRA PALACE, DALI P.O,
KULATHUPUZHA, KOLLAM DISTRICT.
4. SUDHARMANI, AGED 43 YEARS,
D/O.ELSI, THANIVILA PUTHENVEEDU, DALI P.O,
KULATHUPUZHA, KOLLAM DISTRICT.
5. SHEEJA E.S, AGED 40 YEARS,
D/O.ELSI, THANIVILA PUTHENVEEDU, DALI P.O,
KULATHUPUZHA, KOLLAM DISTRICT.
6. SINDHU E.S, AGED 37 YEARS
D/O.ELSI, THANIVILA PUTHENVEEDU, DALI P.O,
KULATHUPUZHA, KOLLAM DISTRICT.
7. SOPHIA.A, AGED 40 YEARS,
D/O.NASEEMA BEEBI, KANDANCHIRA HOUSE, DALI P.O,
KULATHUPUZHA, KOLLAM DISTRICT.
8. M.M SHAFEEK, AGED 40 YEARS,
S/O.BASHEER, SHAMANSIL, OR M.M HOUSE,
DALI P.O, KULATHUPUZHA, KOLLAM DISTRICT.
9. ANSAR H, AGED 30 YEARS,
S/O.HYDROSE, CHARUVILA PUTHENVEEDU, CHOZHICODE P.O,
KULATHUPUZHA, KOPLLAM DISTRICT.

BY ADV. SRI.R.S.SARAT

PJ

....2/-

WP(C).No. 16243 of 2015 (E)

RESPONDENT(S):

- 1. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE ASST.REGISTRAR OF CO-OPERATIVE SOCIETIES,
PATHANAPURAM, PUNALUR, KOLLAM DISTRICT 691 001.**
- 2. THE SECRETARY,
KULATHUPUZHA SERVICE CO-OPERATIVE BANK REG. NO 1867,
KULATHUPUZHA, KOLLAM DISTRICT 691 310.**
- 3. SPECIAL ARBITRATOR CUM SALE OFFICER,
ELAMBAL SUB GROUP, OFFICE OF THE
ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
PUNALUR, KOLLAM DISTRICT 691 007.**

**R1 & 3 BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT
R2 BY ADV. SRI.MANOJ RAMASWAMY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1(A) AWARD IN FILE NO 2213/2011 DATED 15/10/2013

EXHIBIT P1(B) AWARD FILE NO 2206/2011 DATED 15/10/2013

EXHIBIT P1(C) AWARD IN FILE NO 2214/2011 DATED 15/10/2013

EXHIBIT P1(D) AWARD IN FILE NO 2211/2011 DATED 15/10/2013

EXHIBIT P1(C) AWARD IN FILE NO 2209/2011 DATED 15/10/2013

EXHIBIT P1(F) AWARD NO FILE NO 2210/2011 DATED 15/10/2013

EXHIBIT P1(G) AWARD IN FILE NO 1762/2011 DATED 15/10/2013

EXHIBIT P1(H) AWARD IN FILE NO 2207/2011 DATED 15/10/2013

EXHIBIT P1(I) AWARD IN FILE NO 2208/2011 DATED 15/10/2013

EXHIBIT P-2(A) E.A 1837/14 DEMAND NOTICE DATED 20/12/14

EXHIBIT P2(B) E.A 1834/14 DEMAND NOTICE DATED 20/12/14

EXHIBIT P-2(C) E.A 1838/14 DEMAND NOTICE DATED 20/12/14(MEMBER:880)

EXHIBIT P2(D) E.A 1838/14 DEMAND NOTICE DATED 20/12/14 (MEMBER 9163)

EXHIBIT P-2(E) E.A 1847/14 DEMAND NOTICE DATED 30/12/14

EXHIBIT P-2(F) E.A 1845/14 DEMAND NOTICE DATED 30/12/14

EXHIBIT P2(G) E.A 1846/14 DEMAND NOTICE DATED 30/12/14

EXHIBIT P[-2(H) E.A 1834/14 DEMAND NOTICE DATED 20/12/14 (MEMBER :880)

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 16243 of 2015

Dated this the 16th day of June, 2015

JUDGMENT

Heard the learned counsel for the petitioners and the learned Counsel for the respondent, as well as the learned Government Pleader, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. The petitioners, nine in number, are the borrowers from the second respondent Co-operative Bank under different loan contracts. Ventilating their individual grievances that they had been denied the benefit of Mega Adalath conducted in March 2015, and also further complaining that the first petitioner, being the former President of the Society, has been victimized, the petitioners have filed a single writ petition.

3. The learned counsel for the petitioners has strenuously contended that all the petitioners, notwithstanding their initial objections concerning the mode

and method adopted by the second respondent Bank to recover the loans, are willing to pay the entire outstanding amounts in instalments. He has, in the alternative, submitted that given the penurious conditions the petitioners have been facing, the respondent Bank should extend them the benefit of waiver of penal interest.

4. The learned counsel for the respondent Bank has submitted that the petitioners, in all, owed to the Bank about Rs.40,00,000/-. Since the petitioners did not respond to Exhibits R2(a) to R2(h) series of notices, there was no occasion for them to participate in the Mega Adalath. At any rate, the learned counsel for the petitioners has contested the statement of the learned counsel for the respondent Bank that the petitioners had been served with any notice concerning Mega Adalath.

5. The learned counsel for the respondent Bank has also further contended that the petitioners are obligated under the contract of loan to pay off the loans, and that only because of the default committed by the petitioners, has the Bank taken the measures to recover, for the funds belong to the public.

6. I do not see how a writ petition by nine different persons having their independent causes of action under different loan agreements would come together and file one single writ petition, thereby leading to multifariousness. Be that as it may, this Court is not inclined to dismiss the writ petition on the technical ground of multifariousness.

7. Be that as it may, time and again the Courts have held that Article 226 of the Constitution cannot be a measure either for loan waiver or for loan reschedule, both of which are subject to, strictly so, the terms of the contract the parties have entered into.

In the totality of circumstances, I do not see any justifiable ground to interfere with the measures taken by the respondent Bank to recover the outstanding loan amounts from the petitioners. This Court, therefore, is constrained to dismiss the writ petition as being without any merit. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-