

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 17368 of 2015 (U)

PETITIONER(S):

- 1. PJOHN ABRAHAM, S/O.JOHN,
AGED 63 YEARS, SAUDI ARAMCO, SAUDI ARABIA,
WITH PERMANENT ADDRESS AT PUTHUPARAMBIL,
MOOLAVATTOM, KOTTAYAM.**
- 2. DR.GRACY ABRAHAM, W/O.JOHN ABRAHAM,
AGED 57 YEARS, SAUDI ARABIA,
WITH PERMANENT ADDRESS AT PUTHUPARAMBIL,
MOOLAVATTOM, KOTTAYAM.**

**BY SRI.GEORGE CHERIAN (SENIOR ADVOCATE)
ADVS. SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN**

RESPONDENT(S):

- 1. STATE BANK OF TRAVANCORE,
HEAD OFFICE, TRIVANDRUM,
REPRESENTED BY MANAGING DIRECTOR,
PIN: 695 001.**
- 2. STATE BANK OF TRAVANCORE,
ERNAKULAM SANTHI BUILDINGS, VALANJAMBALAM,
REPRESENTED BY ITS MANAGER, PIN: 682 016.**

**BY SRI.T.SETHUMADHAVAN (SENIOR ADVOCATE)
ADV. SRI.K.JAYESH MOHANKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF THE SANCTION LETTER DATED 23/1/2013.
- P2: TRUE COPY OF THE LETTER DATED 7/5/15 ISSUED BY RESPONDENT TO 1ST PETITIONER.
- P3: TRUE COPY OF THE LETTER DATED 7/5/15 ISSUED BY RESPONDENT TO DIRECTORS OF GREAT SEA SHIPPING CO.(P) LTD.
- P4: TRUE COPY OF THE FIXED DEPOSIT RECEIPT A/C NO.67278116159.
- P4(A): TRUE COPY OF THE FIXED DEPOSIT RECEIPT A/C NO.67278115815.
- P4(B): TRUE COPY OF THE FIXED DEPOSIT RECEIPT A/C NO.67278115203.
- P4(C): TRUE COPY OF THE FIXED DEPOSIT RECEIPT A/C NO.67278116513.
- P4(D): TRUE COPY OF THE FIXED DEPOSIT RECEIPT A/C NO.67278116921.
- P4(E): TRUE COPY OF THE FIXED DEPOSIT RECEIPT A/C NO.67278256517.
- P5: TRUE COPY OF THE LETTER DATED 22/5/2015 ISSUED BY GREAT SEA SHIPPING (P) LTD. TO THE BANK.
- P6: TRUE COPY OF THE LETTER DATED 21/5/2015 ISSUED BY THE RESPONDENT BANK TO 2ND PETITIONER.

RESPONDENTS' EXHIBITS & ANNEXURES:

- ANNEXURE R1 : TRUE COPY OF THE LETTER DATED 27.3.2015 ISSUED BY THE BANK.

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J

W.P(C) No. 17368 of 2015

Dated this the 30th day of June, 2015

J U D G M E N T

The petitioners are aggrieved with the fact that the 2nd respondent Bank has exercised a general lien on the fixed deposit which has been deposited with the respondent bank in the mode of 'either of survivor' in the names of the 1st and 2nd petitioners. The learned Senior Counsel for the petitioner would contend that there being no dispute on facts, this Court has to only look at the legal issue as to whether the bank which comes under the definition of "State" under Article 12, could exercise general lien on the fixed deposits, on the basis of the re-calling of the loan facility availed by the company "Great Sea Shipping Private Limited", in which the 1st petitioner is the Chairman/Director.

2. The statement of the Bank discloses that the company, in which the 1st petitioner was the Chairman had been

sanctioned three loans, for which three Directors including the petitioner stood as guarantors and also executed collateral security in favour of the Bank mortgaging landed properties. Dispute arose between the Directors and the 1st petitioner, his son and another Director is said to have approached the civil court against the other directors seeking injunction. The bank is not made a party there in. The learned Senior Counsel submits that the suit was one in which the bank was not at all a necessary party since it was only with respect to the convening of an Extra-Ordinary General Meeting.

3. In any event, the fact remains that the company is not functioning and repayment to the loans are not being made. The company has defaulted the repayment in the loan from 2015 January onwards. The loan amounts were recalled by Exts.P2 and P3. The specific contention of the petitioners herein is with respect to paragraph 8 in Ext.P18 which refers to exercise of general lien

over the fixed deposit remaining in the name of the 1st and 2nd petitioners .

4. True, the 1st petitioner comes within the definition of Article 12 of the Constitution of India, however, the contract between the first petitioner and respondents 1 and 2 in the matter of a loan availed by the company in which the 1st petitioner was a Chairman and the contract of fixed deposit between the 1st and 2nd respondents does not fall within the public domain. Paragraph 43 of 2015(4) SCC 670 (K.K. Saxena v. International Commission on Irrigation and Drainage and others.) is extracted herein:

“What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the

administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

Definitely the petitioner would have to avail of the remedies before the appropriate civil forum and merely because the respondent Bank comes within the definition of Article 12, it may not be possible for this Court to invoke the extraordinary jurisdiction under Article 226. The delay projected before the Civil Forum and the liability to pay court fees cannot be a valid ground to invoke the extraordinary power.

Writ petition is dismissed.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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