IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 17439 of 2015 (D)
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PETITIONER :
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ANAND MOHANDAS, AGED 42 YEARS,
S/O. MOHANDAS, T.C.9/1215, MLR-84
MANGALAM LANE, SASTHAMANGALAM (PO),
THIRUVANANTHAPURAM

BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.
SRI.GOVIND PADMANAABHAN
SRI.V.SANJEEV

RESPONDENTS :
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1. STATE BANK OF INDIA
REPRESENTED BY THE CITYCASE OFFICER,
STRESSED ASSETS RECOVERY BRANCH (SARB), 1ST FLOOR
SANGAMAM, GAS HOUSE JUNCTION, OPPOSIT OF A.K.G.CENTRE
THIRUVANANTHAPURAM 695 033

2. THE DISTRICT COLLECTOR,
COLLECTORATE, THIRUVANATHAPURAM - 695 015

3. DEPUTY TAHSILDAR (RR),
TALUK OFFICE, EAST FORT, THIRUVANANTHAPURAM 695 023

R1 BY ADV. SRI.TOM K.THOMAS
R2 & R3 BY GOVERNMENT PLEADER SRI. R. RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 17439 of 2015 (D)
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**APPENDIX**

PETITIONER(S)' EXHIBITS
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EXT.P1: TRUE COPY OF THE LOAN STATEMENT OF THE PETITIONER ISSUED BY THE FIRST RESPONDENT SHOWING ZERO BALANCE.

EXT.P2: TRUE COPY OF THE PLAINT IN O.S.NO.1614/2014 FILED BY THE FIRST RESPONDENT BEFORE THE MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P3: TRUE COPY OF THE NOTICE ISSUED AGAINST THE PETITIONER UNDER SECTION 34 OF THE REVENUE RECOVERY ACT DATED 24/3/2015.

EXT.P4: TRUE COPY OF THE NOTICE ISSUED AGAINST THE PETITIONER UNDER SECTION 34 OF THE REVENUE RECOVERY ACT DATED 24/3/2015.

EXT.P5: TRUE COPY OF THE REPRESENTATION DATED 7/5/2015 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P6: COPY OF THE LOAN SANCTION LETTER DT 3/6/2009 ISSUED BY THE R1 TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

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**A.K.JAYASANKARAN NAMBIAR, J.**
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**W.P.(C). No.17439 of 2015**
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**Dated this the 6th day of October, 2015**

**JUDGMENT**

The petitioner who had availed a loan from the respondent bank under the Prime Minister's Employment Programme, defaulted in repayment of the same, the bank therefore initiated proceedings under the Revenue Recovery Act. Exts.P3 and P4 are the notices issued to the petitioner under the Revenue Recovery Act. In the writ petition, the challenge against Exts.P3 and P4 notices is premised primarily on the contention that as per notification SRO No.1465/87, that was issued in exercise of the powers confirmed by section 71 of the Kerala Revenue Recovery Act, the provisions of the Act have been made applicable to recovery of amounts due from any person or class of person of any bank on account of any loan advanced by that bank under various development schemes. The notification also defines a development scheme as including all priority sector advances and all financial assistance given through banks under the schemes approved by State/Central Government or other Government Agencies or the schemes administrated by the development department with a view to improving the living conditions of the economically and socially weaker sections of the community. It is the contention of the petitioner based on the said definition of development scheme that all advances and financial assistance given through banks under various schemes enumerated in the admission should necessarily be with a view to improving the living conditions of the economically and socially weaker sections of the community in order to qualify for the benefit of the aforesaid notification. Counsel for the petitioner would submit that in as much as the respondent bank has not been able to demonstrate that the financial assistance given to the petitioner was under a scheme that had as its object, the improving of living conditions of economically and socially weaker sections of the community, the respondent bank could not take recourse to the provisions of the Kerala Revenue Recovery Act for realization of its dues from the petitioner but would necessarily have to resort to proceedings before the Civil Court for realization of the dues. It is the further contention of counsel for the petitioner that the necessity of the respondent bank pursuing its remedy before the Civil Court would assume significance in the light of the fact that the liability of the petitioner to the respondent bank has not been quantified till date and the recovery of such amounts could be done only through a proceedings initiated under the Civil Court. Counsel for the petitioner would also rely on the decision of the Supreme Court in **Califf India Chambers v. Syndicate Bank** [1999 KHC 68; wherein paragraphs 4 and 5, the Court has after taking note of the fact that the respondent bank, in the case before it had not proceeded any material to show that there was a development scheme that was approved by the State/Central Government or other Government Agencies with a view to meet living conditions of economically and socially weaker sections of the community, the bank could not take recourse to the provisions of the Kerala Revenue Recovery Act as it would not fall within the scope of the notification issued under Section 71 of the Kerala Revenue Recovery Act.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the respondent bank.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that the recourse by the respondent bank to revenue recovery proceedings under the Kerala Revenue Recovery Act for recovery of defaulted loan amounts from the petitioner is based on the notification SRO 1465/87 issued under the Revenue Recovery Act. The said notification reads as under:

“S.R.O.No.1465/87 - In exercise of the powers conferred by Section 71 of the Kerala Revenue Recovery Act, 1968 (15 of 1968), the Government of Kerala, being satisfied that it is necessary to do so in public interest hereby declare that the provisions of the said Act shall be applicable to the recovery of amounts due from any person or class of persons to any bank on account of any loan advanced by that bank under various development schemes.

Explanation - For the purposes of this notification-

(a) “Bank” means -

(i) a banking company as defined in the Banking Regulation Act, 1949 (Central Act 10 of 1949);

(ii) the State Bank of India constituted under the State Bank of India Act, 1955 Central Act 23 of 1958);

(iii) a subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959);

(iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970);

(v) any banking institution notified by the Central Government under Section 51 of the banking Regulation Act, 1949 (Central Act 10 of 1949);

(vi) the Agricultural Refinance Corporation constituted under the Agricultural Refinance and Development Corporation Act, 1963 (Central Act 10 of 1963);

(vii) the Kerala Agro-Industrial Corporation Limited, a Company Registered under the Companies Act, 1956 (Central Act 1 of 1956);

(viii) the Agricultural Finance Corporation Limited a Company incorporated under the Companies Act, 1956 (Central Act 1 of 1956).

(b) “Development Scheme” shall include [all priority sector advances and] all financial assistance given through the banks under the schemes approved by the State/Central Government or other Government agencies or the schemes administrated by the Development Department with a view to improving the living conditions of the economically and socially weaker section of the community”

4. The contention of the petitioner in the writ petition is essentially that the loan availed by him from the respondent bank will not come within the scope of development scheme for the purposes of categorizing the loan that was advanced to the petitioner by the respondent bank. Reading of the definition of development scheme in the notification, as extracted above would indicate that it includes three categories of advances for financial assistance namely:

1. All priority sector advances

2. All financial assistance given through banks under the schemes approved by the State/Central Government or other Government Agencies.

3. All financial assistance given through banks under schemes administered by the development department with a view to improve the living conditions of the economically and socially weaker sections of the community.

5. It is not in dispute, in the instant case, that the financial assistance given to the petitioner by the respondent bank was under the Prime Minister’s Employment Generation Programme, which is a scheme approved by the Central Government. In that view of the matter, I would think that the

financial assistance given to the petitioner by the respondent bank would fall within the scope of clause (2) above namely “all financial assistance” given through banks under the schemes approved by the State/Central Government. In my view the qualification with regard to the financial assistance being rendered with a view to improve the living conditions of the economically and socially weaker sections of the community would apply only in respect of the 3rd category of financial assistance, namely financial assistance given through banks under schemes administrated by development department. I am therefore not pursuant to accept the contention of counsel for the petitioner that in as much as the respondent bank has not been able to demonstrate that the financial assistance given to the petitioner was under a scheme that was promulgated with a view to improve the living condition of the economically and socially weaker sections of the community, the respondent bank could not take recourse under the provisions of the Revenue Recovery Act for recovery of the defaulted loan amounts from the petitioner. Resultantly, the writ petition in its challenge against Exts.P3 and P4 notices on this ground fails and is accordingly dismissed.

6. Counsel for the petitioner would submit that the respondent bank has indicated that it has written off the

outstanding dues from the petitioner in its accounts and therefore this would amount to an admission by the respondent bank that there are no dues outstanding from the petitioner. I am afraid, I cannot accept the said contention of the petitioner since the decision of writing off of the outstanding receivable in the books of account of the bank is a decision that is arrived at by the bank based on a realistic estimation of the possibility of recovery of amounts from the defaulter. A decision taken by the bank to write of the said amounts cannot be viewed as a decision of the bank giving up its rights to recover the amounts from the petitioner.

7. I however leave it open to the petitioner to approach the respondent bank with a prayer for the grant of instalment facility for repaying the defaulted amounts due to the respondent bank. If the petitioner approached the respondent bank with a prayer for extention of installment facility then the same shall be considered by the respondent bank, taking into account the financial hardship urged on behalf of the petitioner, the writ petition is disposed as above.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

rsr