

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 18158 of 2015 (T)

PETITIONER : -

MANOHARAN, AGED 46 YEARS,
S/O PURUSHOTHAMAN, PUNATHIL HOUSE,
KANNANKARA P.O., CHELANNUR,
KOZHIKODE DISTRICT, PIN:673616.

BY ADV.SRI.M.P.MOHAMMED ASLAM

RESPONDENTS : -

1. KOZHIKODE PRIMARY CO-OPERATIVE AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD,
P.O. PUTHIYARA, KOZHIKODE-673004.
2. SALE OFFICER,
KOZHIKODE PRIMARY CO-OPERATIVE AGRICULTURAL RURAL
DEVELOPMENT BANK LIMITED,
P.O. PUTHIYARA, KOZHIKODE-673004.
3. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
KOZHIKODE/VALUATION OFFICER,
KOZHIKODE PRIMARY CO-OPERATIVE AGRICULTURAL & RURAL
DEVELOPMENT BANK LIMITED,
P.O. PUTHIYARA, KOZHIKODE-673004.
4. STATE OF KERALA,
REPRESENTED BY SECRETARY, CO-OPERATIVE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
PIN:695001.

R3 & R4 BY Sr. GOVERNMENT PLEADER SRI. K.C. VINCENT
R1 & R2 BY SRI. THOMAS ANTONY, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : TRUE COPY OF THE RECEIPT FOR PAYMENT OF RS.80,000/- ISSUED FROM THE 1ST RESPONDENT BANK TO PETITIONER DATED 17.7.1998.

EXHIBIT P2 : TRUE COPY OF THE RECEIPT ISSUED FOR PAYMENT OF RS.40,350/- DATED 22.9.1998.

EXHIBIT P3 : TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN O.P.NO.13162/1998 DATED 22.1.1999.

EXHIBIT P4 : TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN O.P.NO.9639/2001 DATED 22.1.1999.

EXHIBIT P5 : TRUE COPY OF STATEMENT OF ACCOUNTS GIVEN BY THE 1ST RESPONDENT TO THE PETITIONER DATED 12.4.2002.

EXHIBIT P6 : TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT IN ARC 13/2002 DATED 1.7.2002.

EXHIBIT P7 : TRUE COPY OF THE JUDGMENT PASSED BY THE 3RD RESPONDENT IS ARC 13/2002 DATED 21.12.2005.

EXHIBIT P8 : TRUE COPY OF THE PETITION IN R.P.NO.143/2006 FILED BY THE PETITIONER BEFORE THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM, DATED 23.3.2006.

EXHIBIT P9 : TRUE COPY OF THE ORDER PASSED BY THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM IN R.P.NO.143/2006, DATED 13.2.2008.

EXHIBIT P10: TRUE COPY OF THE SALE PROCLAMATION IN E.P.NO.135/13014 L NOS. SRTO.30/97-98 ISSUED BY THE 2ND RESPONDENT AND DATED 11.5.2015 AND ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 18158 of 2015

Dated this the 18th day of June, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, 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. Briefly stated, initially the petitioner availed himself of an agricultural loan from the first respondent Bank to be repaid in five years. In the first instance, some of the sureties to the loan filed O.P. No. 13162/1998, in which this Court directed through Exhibit P3 judgment, dated 22.01.1999, the respondent Bank to give a statement of account to the petitioners therein, apart from directing the

petitioners to ventilate their grievance before an appropriate forum. At a later point of time, the petitioner herein filed O.P. No. 9639/2002 for another direction to the respondent Bank to furnish a statement of account, since it is the contention of the petitioner that earlier no statement of account was given, despite the direction of this Court in Exhibit P3 judgment. Eventually, the said O.P. No. 9639/2002 was also disposed of through Exhibit P4 judgment.

3. All along, it is the singular contention of the petitioner that he has repaid the entire loan amount. Accordingly, when the respondent Bank supplied to the petitioner Exhibit P5 statement of account, dated 12.04.2002, showing an amount of Rs. 38,493/- as due, he filed A.R.C. No. 13/2002 before the third respondent, who in turn dismissed the same as per Exhibit P7 judgment. Aggrieved, the petitioner filed R.P. No. 143/2006 before the Co-operative Tribunal, Thiruvananthapuram, which allowed the revision through Exhibit P9 order, dated 13.02.2008. In fact, the Tribunal, apart from setting aside Exhibit P7 order, directed the learned Arbitrator to adjudicate A.R.C. No.

13/2002 afresh, after affording an opportunity to the petitioner to adduce evidence.

4. Contending that while the said A.R.C. No. 13/2002, on remand, has been pending, the second respondent has issued Exhibit P10 sale proclamation for the sale of petitioner's mortgaged land, the petitioner has filed the present writ petition.

5. Though the learned Standing Counsel for the respondent Bank has initially contended that the respondent Bank is not amenable to either arbitration proceedings or revision proceedings, as have been taken out by the petitioner. In the light of the statutory provisions contained in the Kerala State Co-operative (Agricultural and Rural Development Banks) Act, 1984, he has eventually submitted that the writ petition could be disposed of with a direction to the learned Arbitrator to decide A.R.C. No. 13/2002 expeditiously.

6. The learned Government Pleader, on instructions, has submitted that the ARC is pending and is yet to be disposed of.

7. The learned counsel for the petitioner has contended, justifiably, that since the arbitration proceedings are pending, especially on remand, it is inappropriate for the second respondent to have issued Exhibit P10 sale proclamation.

8. Indeed, this Court is of the opinion that once an aggrieved person has taken recourse to any statutory remedy, especially of judicial nature, it is unconscionable as well as impermissible to stultify the said statutory proceedings by taking recourse to precipitous steps which may eventually render the judicial proceedings otiose.

9. In the facts and circumstances, having regard to respective submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondents, as well as the learned Government Pleader, this Court, without adverting to the merits of the matter, disposes of the writ petition with a direction to the third respondent to dispose of A.R.C. No. 13/2002 as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

It is further made clear that the respondent Bank is at liberty to raise all its pleas and defence, including that of maintainability of A.R.C. Proceedings, before the third respondent.

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

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-