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. 18741 of 2015 (P)

PETITIONER(S):

JOSEPH XAVIER ANTHRAPER,
ANTHREPPER AVENUE, 69/14, MUTTAMKARA,
THYKATTU KARA P.O., ALUVA, PIN-683 106.

BY ADV. SRI.J.OM PRAKASH.

RESPONDENT(S):

1. THE DISTRICT COLLECTOR,
   COLLECTORATE P.O., ALAPPUZHA.

2. THE VILLAGE OFFICER,
   CHERTHALA NORTH VILLAGE, CHERTHALA P.O.,
   PIN - 688 524.

3. THE KERALA STATE FINANCIAL ENTERPRISES LTD.,
   REP. BY ITS MANAGING DIRECTOR, BHADHRATHA,
   THRISSUR P.O., PIN - 688 524.

4. THE SPECIAL DEPUTY TAHSILDAR (R.R.),
   K.S.F.E. LTD., CONVENT SQUARE, ALAPPUZHA P.O.,
   PIN - 688 001.

5. R.BAIJU,
   S/O. REMANAN, KAKKAPARAMBIL VELIYIL, CHERTHALA P.O.,
   PIN - 688 524.

R3 BY ADV. SRI.BABU VARGHESE (SR.)
R3 BY ADV. SRI.ALEXANDER.C.V., SC, KERALA STATE FINANCIAL ENTERPRISES
BY GOVERNMENT PLEADER SRI.R.RENJITH
BY SRI.ALEXANDER.C.V., SC, KERALA STATE FINANCIAL ENTERPRISES.

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

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1- TRUE COPY OF THE AFFIDAVIT OF THE PETITIONER AND THE 5TH RESPONDENT DATED 2-3-2009.

EXHIBIT P2- TRUE COPY OF THE AGREEMENT EXECUTED BY THE 5TH RESPONDENT DATED 5-6-2009.

EXHIBIT P3- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 4TH RESPONDENT DATED 2-6-2015.

EXHIBIT P4- TRUE COPY OF THE REPLY DATED 6-6-2015.

EXHIBIT P5- TRUE COPY OF LETTER DATED 06/06/2015 ISSUED BY 4TH RESPONDENT.

EXHIBIT P6- TRUE COPY OF THE TAX RECEIPT ISSUED IN THE NAME OF THE PETITIONER AND WIFE DATED 12/07/2012.

RESPONDENT(S)' EXHIBITS:

EXHIBIT R3(A)- TRUE COPY OF THE AGREEMENT DATED 05/06/09 SIGNED BY THE PETITIONER.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.
==
W.P.(C). No. 18741 of 2015
==
Dated this the 6th day of October, 2015

JUDGMENT

The petitioner, who had availed of a Chitty loan from the respondent Company, defaulted in repayment of the same. The respondent Company, therefore, initiated revenue recovery proceedings, against both the petitioner as well as the sureties of the loan. In the writ petition, the challenge against the revenue recovery proceedings initiated against the petitioner is premised, primarily on the contention that the surety had also executed a mortgage in favour of the respondent Company and that under the said circumstances, it was incumbent upon the respondent Company to proceed against the mortgaged property first before proceeding against the petitioner, who was the principle debtor.

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

3. The learned counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in **Union Bank of India** v. **Manku Narayana** [1989 ISJ (Banking) 307] to canvas for the proposition that, since a portion of the defaulted amount is covered

by a mortgage, the creditor bank has to proceed against the mortgaged property first and then proceed against the guarantor. The learned counsel would rely on the said decision to contend that in the instant case, since there was property, that was mortgaged by the surety in favour of the bank, the bank should proceed against the mortgaged property of the surety, before proceeding against the petitioner. Per contra, it is the submission of the learned counsel for the respondent Company that, the liability of the principal debtor and the surety is co-extensive and therefore, it is open to the respondent Company to proceed against either for realisation of the dues amount.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the legal position that the creditor can proceed either against the principal debtor or the surety is not in dispute. The said legal position has been recently restated by the Supreme Court in **Central Bank of India** v. **C.L.Vimla and Others** & connected cases[**2015 (7) SCC 337**]. In the instant case, the reliance by the petitioner is on the decision of the Hon'ble Supreme Court in **Union Bank of India**'s case (cited supra) . Even in that case, it is

seen that the mortgage of property was executed in favour of the creditor bank by the principal defaulter and it was in the context of the steps initiated by the creditor bank against both the principal defaulter and the guarantor, that the Supreme Court found that, inasmuch as a portion of the decreed amount was covered by a mortgage, the decree holder bank had to proceed against the mortgaged property first and then proceed against the guarantor. In the instant case, the facts are clearly distinguishable, in that the respondent Company has chosen to proceed against the principal debtor and the contention of the petitioner, who is the principal debtor, is that the respondent Company must proceed first against the property that has been mortgaged by the surety. In the light of the decision of the Hon'ble Supreme Court in **Central Bank of India** v. **C.L.Vimla and Others**'s case (cited supra) the said contention is wholly unacceptable.

5. I am of the view that the interest of justice would be served by granting the petitioner an installment facility to discharge the liability due to the respondent Company. I therefore, dispose the writ petition with the following directions:

(i) The total outstanding amount from the petitioner to the respondent Company as on 30.06.2015 is stated to be Rs.7,43,101/-. This is after adjusting an amount of Rs.1,00,000/-, that was paid by the petitioner, during the pendency of the writ petiton. Accordingly, if the petitioner remits the amount of Rs.7,43,101/- together with accrued interest from 30.06.2015 in twelve equal and successive monthly installments commencing from 01.11.2015, then the recovery steps as against the petitioner by the respondent Company shall be kept in abeyance.

(ii)It is made clear that if the petitioner commits a default in respect of any of the installments, he will lose the benefit of this judgment and the respondent will be free to continue the recovery proceedings against him from the stage at which they presently stand.

(iii) I make it clear that, nothing in this judgment, shall stand in the way of the petitioner proceeding against the 5th respondent, in accordance with law for recovery of any amounts, which according to him is to be recovered from the 5th respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das