

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 19403 of 2015 (A)

PETITIONER:

S. MUHAMMED ISMAIL,
S/O. LATE A. SULAIMAN RAWTHER,
RESIDING AT ASR BUNGLOW, ENGLISH CHURCH ROAD,
KOPPAM AMSOM DESOM, PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENTS:

1. PERUVEMBA SERVICE CO-OPERATIVE BANK LTD
NO. F 1648, KADUMTHIRUTHY BRANCH, KINASSERY P.O.,
PALAKKAD - 678 707.
2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
PALAKKAD - 678 001.

R1 BY ADV. SRI.M.P.ASHOK KUMAR
R1 BY ADV. SRI.P.C.GOPINATH
R1 BY ADV. SMT.BINDU SREEDHAR
R1 BY ADV. SMT.R.S.MANJULA
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT-P1-TRUE COPY OF THE OPERATIVE PORTION OF THE JUDGMENT IN W.A 931/2012 DATED 25/03/2015.

EXHIBIT-P2-TRUE COPY OF THE DETAILS OF GOLD LOAN AVAILED BY THE PETITIONER FROM THE IST RESPONDENT BANK.

EXHIBIT-P3-TRUE COPY OF THE RECEIPT NO. 309771 DATED 26/05/2015 FOR RS. 1,99,355/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P4-TRUE COPY OF THE RECEIPT NO. 309772 DATED 26/05/2015 FOR RS. 2,55,040/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE RECEIPT NO. 309773 DATED 26/05/2015 FOR RS. 1,08,177/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P6-TRUE COPY OF THE RECEIPT NO. 309768 DATED 26/05/2015 FOR RS. 2,29,447/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P7-TRUE COPY OF THE RECEIPT NO. 309769 DATED 26/05/2015 FOR RS. 2,49,007/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P8-TRUE COPY OF THE RECEIPT NO. 309770 DATED 26/05/2015 FOR RS. 7,178/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P9-TRUE COPY OF THE RECEIPT DATED 23/01/2015 FOR RS.2,00,000/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P10-TRUE COPY OF THE RECEIPT DATED 17/03/2015 FOR RS.2,00,000/- ISSUED BY THE IST RESPONDENT.

EXHIBIT-P11-TRUE COPY OF THE NOTICE DATED 05/06/2015 PROPOSING TO SELL THE ORNAMENTS IN AUCTION ON 27/06/2015.

EXHIBIT P12: TRUE COPY OF THE PETITION FILED BEFORE THE MINISTER OF CO-OPERATIVE SOCSIETIES ALONG WITH ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS:

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P.(C). No. 19403 of 2015 (A)

Dated this the 26th day of October, 2015.

JUDGMENT

About this case, the less said the better. It singularly illustrates to what extent a suitor can go to wrench an order from one forum or another, at any cost—whatever be the consequences. As I propose to dispose of the writ petition, or rather dismiss it, on the principal ground of the petitioner's deplorable conduct, especially as regards the manner in which he abused the process of court, I need not advert to the merits of the matter.

2. The petitioner pledged his gold ornaments and borrowed (in fact, through different loans) ₹ 30,00,000/- from the first respondent Bank. After initial payments, when the petitioner had committed default, the first respondent initiated recovery proceedings, as part of which it issued Ext.P11 series of notices proposing to auction the gold ornaments on 27.06.2015. Under those circumstances, the petitioner filed the present writ petition seeking the following reliefs:

1. Issue a writ of mandamus or any other appropriate writ or

order restraining the 1st respondent from conducting auction as proposed in Ext.P11 series of notices.

2. Issue a writ of mandamus or any other appropriate writ or order commanding the 1st respondent to grant a breathing period of at least six months to the petitioner to clear of the amount demanded in Exhibit P11 series of notices.
3. To pass such other orders or reliefs as this Hon'ble Court deems fit in the interest of justice.

3. On 26.06.2015 this Court stayed the auction subject to the condition of the petitioner depositing on or before 15.07.2015 an amount of ₹5,00,000/- towards the loan arrears.

4. Later the matter underwent several adjournments, with no representation for the petitioner on certain occasions, though.

5. Eventually, the learned counsel for the respondent Bank has brought to the notice of the Court that the petitioner, instead of complying with the interim direction of this Court, approached the Government, presumably suppressing the factum of the writ petition, and obtained stay of auction. From the copy of the proceedings placed before this Court by the learned counsel for the respondent Bank, it is evident that through a communication dated 10.09.2015, the Joint

Registrar, who is the 2nd respondent in the writ petition, directed the Secretary of the respondent Bank to the following effect:

"Sri. Muhammed Ismail, Mum availed a Gold loan of Rs.2848800/- by pledging Gold ornaments (ASR Banglavu, English Church Road, Palakkad)

The auction of the said Gold ornaments is scheduled on 12.09.2015 as the Hon'ble Minister for Co-operative Department directed to stop the auction proceedings and also to grant time till 31.10.2015 to pay the amount, it is hereby directed to stop auction proceedings and to grant time till 31.10.2015 for remittance."

6. It is evident from the above quoted communication dated 10.09.2015 that the Joint Registrar has directed the Secretary of the respondent Bank to stop the auction proceedings and grant the petitioner time till 31.10.2015 for redeeming the gold ornaments.

7. Dismayed at the brazen forum shopping (actually, the petitioner approached an extra-legal forum, so to say) indulged in by the petitioner, this Court has further directed the learned Advocate representing the learned counsel on record for the petitioner to produce a copy of the petition said to have been filed by the petitioner before the Hon'ble Minister at whose instance, as can be gathered

from the communication dated 10.09.2015 issued by the Joint Registrar, the auction has been interdicted. The learned counsel for the petitioner did produce the petitioner's representation said to have been filed before the Hon'ble Minister.

8. It is evident from the application produced by the learned counsel for the petitioner that on 07.09.2015, the petitioner requested the Hon'ble Minister for Co-operation, the Government of Kerala, to grant him 45 days' time to enable him to remit the entire amount with interest. There is no whisper about the pending writ petition, much less about the conditional interim-stay granted by this Court.

9. This Court gathers from the submissions of the learned counsel for the petitioner that, based on the oral instructions of the Hon'ble Minister, the second respondent issued the communication dated 10.09.2015 interdicting the auction. Under these circumstances, the respondent Bank was constrained to postpone the auction.

10. To this day, the petitioner does not seem to have paid any amounts even on the strength of the second respondent's communication dated 10.09.2015. The learned counsel for the

petitioner has feebly submitted that the time granted by the second respondent is up to 31.10.2015. I, however, hasten to add that, even if the petitioner had paid the entire amount in compliance with the 'extra-legal order' of stay issued by the 2nd respondent, the petitioner's conduct still would have remained deplorable.

11. In the first place, neither the learned counsel for the petitioner nor the learned Government Pleader could show me any provision under the Kerala Co-operative Societies Act or the Rules made thereunder, which empowers the Hon'ble Minister to issue any direction, more particularly orally, either to the second respondent or the respondent Bank to postpone the auction and grant further time to a defaulter to clear the loan. This power, if any, has to be appreciated in the face of the fact that the defaulter has already approached a competent judicial forum and obtained an order, conditional though, in his favour.

12. I am, however, inclined to hold that since the petitioner's representation to the Hon'ble Minister has not contained any reference to the writ petition, the said authority may not have any knowledge

about the pendency of the writ petition.

13. What worries me immensely is the attitude of the second respondent. Indeed, he is a Government Servant. But it does not mean that he has to disregard every statutory mandate and simply act to the dictates of a superior executive. The situation is all the more disturbing viewed from the perspective, first, that there are no express orders from the Hon'ble Minister; second, the 2nd respondent himself is a party to the pending judicial proceedings—in other words, the matter is sub judice.

14. Understandably, sometimes, as is the case in the present instance, an Hon'ble Minister may have been genuinely unaware of the judicial proceedings pending or the factum that the statute does not cloth him with any power. Under those circumstances, it is the bounden duty of the official concerned, say, the second respondent, to place the issue before the Hon'ble Minister along with the necessary statutory provisions, so as to enable him to take an informed decision.

15. Regrettably, despite the 2nd respondent himself being a party to the judicial proceedings, he has blissfully acted on the alleged oral

instructions of the Hon'ble Minister and interdicted the auction, without, evidently, any statutory backing. The supine and insouciant attitude of the second respondent cannot be appreciated.

16. Needless to observe that the courts have expended countless number of hours and pronounced innumerable judgments on the need for probity in the conduct of litigation. Litigation is not a war to be won at any cost and all times. It is an equitable adjudication of inter-parte disputes within a well-established procedural frame work of fairness.

17. It is axiomatic to observe that this court's remedial dispensation under Article 226 of the Constitution is a facet of equity jurisprudence. Succinctly stated, in the adjudication of the issues, more than the merits of the matter, the conduct of the suitors assumes importance.

18. In **K.D. Sharma v. SAIL**¹ (2008) 12 SCC 481, the Hon'ble Supreme Court has held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable, and discretionary. And it is imperative that the petitioner approaching the writ court must come

¹ (2008) 12 SCC 481

with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

19. The Apex Court has further observed that a prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

20. Exemplary conduct on the part of the petitioner, especially the one who invokes the equity jurisdiction of this Court, is the sine qua non. Time and again, the courts have held that even the best of

the cases can be, and ought to be, thrown out, if the conduct of the suitor is blameworthy. In the present instance, the petitioner's conduct is not only blameworthy but also deplorable.

21. The learned counsel for the petitioner has submitted that, without his knowledge, the petitioner has approached the Hon'ble Minister and obtained a stay of proceedings despite the pendency of the writ petition; more particularly, without complying with the interim direction of this Court and also by suppressing the fact of the pending writ proceedings. Be that as it may, I am inclined to believe the version of the learned counsel for the petitioner. Nevertheless, it does not absolve the petitioner of his guilt in taking the court for a ride by abusing its process.

In the facts and circumstances, this Court, without adverting to the merits of the matter, dismisses the writ petition with exemplary cost of ₹ 50,000/- (Rupees fifty thousand only) to be paid to the Kerala High Court Advocates Welfare Fund Trust.

DAMA SESHADRI NAIDU, JUDGE.

