IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 19834 of 2015 (D)

PETITIONER:

MALAPPURAM DISTRICT CO-OPERATIVE
MOTOR VEHICLES LTD. NO M 12, UPHILL,
MALAPPURAM - 676505,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.V.RAJENDRAN

RESPONDENT(S):
----

1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY,
   TRANSPORT DEPARTMENT,
   THIRUVANANTHAPURAM - 695001.

2. **THE TRANSPORT COMMISSIONER,**
   THIRUVANANTHAPURAM-695001.

3. **JOINT REGISTRAR OF CO-OPERATIVE SOCEITIES**
   (GENERAL), MALAPPURAM - 676505.

BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 19834 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1:- **TRUE COPY OF THE ORDER DATED 5/2/2000 OF THE 3RD RESPONDENT.**

P2:- **TRUE COPY OF THE LETTER DATED 6.5.2015 OF THE 2ND RESPNODENT.**

P3:- **TRUE COPY OF THE CIRCULAR NO 13/2011 DATED 13/6/2011 OF THE 2ND RESPONDENT.**

P4:- **TRUE COPY OF THE CIRCULAR NO 14/2011 DATED 28/6/2011 OF THE 2ND RESPONDENT.**

P5:- **TRUE COPY OF THE LETTER 15/12/2010 OF THE RESERVE BANK OF INDIA TO THE 2ND RESPONDENT.**

P6:- **TRUE COPY OF THE REPRESENTATION DATED 16/6/2016 OF THE PETITIONER TO THE IST RESPONDENT.**

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19834 of 2015

Dated this the 14th day of July, 2015.

JUDGMENT

The petitioner society is aggrieved by Ext.P3 circular which insists for a licence under the Kerala Money Lenders Act (for short "Act") for endorsement of Hypothecation in favour of the financiers on the certificate of registration.

2. The petitioner is a Co-operative Society registered in 1973 with the object of providing financial assistance to its members to purchase Motor Vehicles as a means of self employment. The society gives loans to its members as per the terms of the Sub Rules approved in Ext.P1. While registering the vehicles, hypothecation in favour of the society has to be entered in the certificate of registration and Sec.51 of the MV Act obligates the making of such endorsements. However, in Ext. P3 circular, the second respondent has directed the registering authorities that such endorsements need be made only if the Financier has got a licence under the

Kerala Money Lenders Act. Ext.P3 is issued with an intention to curb the malpractices among the private financial agencies which are functioning without any proper registration or control. Since the petitioner is functioning under the strict supervision of the Governmental agencies and it gives financial assistance only to its members the apprehensions expressed in Ext P3 are misplaced in the case of the petitioner; it is alleged. The petitioner points out that the refusal to record the Hypothecation in the R.C. would considerably affect the business of the petitioner and it would defeat the very purpose for which the society was formed. Ext.P3 circular has resulted in obstructing the legal business of the petitioner. Though the petitioner approached the first and second respondents requesting them to exempt the petitioner from the operation of Ext.P3, there is no response. Ext. P6 representation was also not considered. Petitioner prays that Ext.P3 circular be quashed or the petitioner be exempted from the operation of the same.

3. I have heard the learned counsel for the petitioner and the learned Senior Government Pleader in the matter.

4. Evidently, the second respondent has issued Ext.P3 circular to insist for a licence under the Act to get the hypothecation with the R.C.Book on the basis of the judgment of this Court, which is in respect of a private financier. The argument of the petitioner is that the Money Lenders Act is not applicable to the Co-operative Society and therefore, the petitioner prays for quashing Ext.P3 circular.

5. Under Section 2(7) of the Act, Co-operative Society would not come under the purview of money lender and, therefore the society need not be registered under the Act. As per Rule 2(d) of the Central Motor Vehicle Rules, the financier need not get registration under the Act. If the agreement of hire purchase is produced before the registering authority, he is bound to record the same in the RC Book as provided under Section 51 of the Motor Vehicles Act. Sub Section (7) of Section 2 of Kerala Act XXXV/1958 defines a 'money lender' as

meaning a person whose main or subsidiary occupation is the business of advancing and realising loans, but, excludes a bank or a co-operative society. This position has been upheld by this Court in **Damodaran v. State of Kerala** [1961 KLT 1101]. No contrary decisions are brought to my notice. Therefore, this Court is of the view that the petitioner is entitled to the relief as prayed for.

In the result, the writ petition is disposed of, making it clear that Ext.P3 circular does not apply to the petitioner's society and directing the first respondent to consider Ext.P6 representation and take appropriate orders thereon in the light of what has been stated above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.