

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 29304 of 2013 (K)

PETITIONERS :-

1. K.S.SIVAPRASAD, AGED 51 YEARS,
S/O SANKARAN NAIR, SR.T.O.A.(SENIOR TELEPHONE OPERATIVE
ASSISTANT), OFFICE OF GENERAL MANAGER, TELECOM(BSNL),
BHARATHIYA SANCHAR NIGAM LTD., THIRUVALLA,
PATHANAMTHITTA DISTRICT.
2. ANNAMMA BABY, AGED 45 YEARS,
W/O.BABY, TELEPHONE OPERATIVE ASSISTANT (T.O.A),
H.R.D.SECTION, OFFICE OF THE GENERAL MANAGER,
B.S.N.L.THIRUVALLA, PATHANAMTHITTA DISTRICT.

BY ADV.SRI.R.SANTHOSH BABU

RESPONDENTS :-

1. ASSISTANT REGISTRAR,
OFFICE OF THE ASSISTANT REGISTRAR, POSTAL TELECOM,
B.S.N.L. EMPLOYEES CO-OPERATIVE SOCIETY LTD.NO.1940,
THIRUVANANTHAPURAM-695001.
2. THE ACCOUNTS OFFICER,
OFFICE OF THE GENERAL MANAGER, TELECOM, B.S.N.L.,
THIRUVALLA-689 101.
3. SECRETARY, POSTAL, TELECOM,
B.S.N.L. EMPLOYEES CO.OPERATIVE SOCIETY LTD NO.1940,
THIRUVANANTHAPURAM-695001.
4. E.V.MURALEEDHARAN NAIR (AGE AND FATHERS NAME NOT KNOWN
TO THE PETITIONER), FORMER TELEPHONE MECHANIC,
TELEPHONE EXCHANGE, SEETHATHODU,
NOW RESIDING AT EDANATTUPADINJARETHIL, VAZHAMUTTOM P.O.,
OMALLOOR, PATHANAMTHITTA, PIN-689 647.

R1-R3 BY ADV. SMT.I.SHEELA DEVI, SC, BSNL(BSNL)

BY SRI.MATHEWS K.PHILIP, SC, BSNL

R1 BY ADV.SRI.V.V.SURESH

BY Sr. GOVERNMENT PLEADER SRI. M. MOHAMMED SHAFI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-08-2015. THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

- EXHIBIT-P1: TRUE COPY OF NOTICE NO.OL.638/09-10 ISSUED BY 1ST
RESPONDENT TO THE 1ST PETITIONER DATED 13.9.2012.
- EXHIBIT-P2: TRUE COPY OF ORDER NO.X-1/DGM/(CFA)/ PTA/2011-12/14 DATED
7.2.2012 ISSUED BY GENERAL MANAGER (CFA),
PATHANAMTHITTA.
- EXHIBIT-P3: TRUE COPY OF LETTER FROM 1ST RESPONDENT TO THE 2ND
RESPONDENT DATED 25.5.2013.
- EXHIBIT-P4: TRUE COPY OF LETTER FROM 1ST RESPONDENT TO THE 2ND
RESPONDENT DATED 25.5.2013.
- EXHIBIT-P5: TRUE COPY OF REQUEST OF 1ST PETITIONER TO 1ST
RESPONDENT DATED 17.5.2013.
- EXHIBIT-P6: TRUE COPY OF REQUEST OF 1ST PETITIONER TO THE 3RD
RESPONDENT DATED 17.5.2013.
- EXHIBIT-P7: TRUE COPY OF REQUEST OF 2ND PETITIONER TO THE 1ST
RESPONDENT DATED 17.5.2013.
- EXHIBIT-P8: TRUE COPY OF REQUEST OF 2ND PETITIONER TO THE 3RD
RESPONDENT DATED 17.5.2013.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 29304 of 2013

Dated this the 31st day of August, 2015

JUDGMENT

The petitioners are the guarantors to the loan taken by the fourth respondent from the third respondent-Employees Co-operative Society. In the course of time, having committed default in repaying the loan amount, the fourth respondent was made to retire compulsorily as a consequence to the disciplinary proceedings initiated against him on a different count though.

2. The grievance of the petitioners is that though there are terminal benefits due to the fourth respondent lying with the employer; the third respondent, instead, has initiated recovery proceedings only against the petitioners, the guarantors.

3. The learned counsel for the petitioners has submitted that the fourth respondent obtained a loan from the third respondent Co-operative Society and later committed default. The outstanding loan amount is

Rs.4,06,382, as could be seen from Exhibit P3. It is the specific contention of the learned counsel for the petitioners that the employer, Bharat Sanchar Nigam Limited, has to pay Rs.12,00,000/- to the fourth respondent towards the settlement of his terminal benefits.

4. Despite the fact that the petitioners have already pointed out to the third respondent Bank, and the employer as well, that the loan amount could be adjusted from and out of the fourth respondent's terminal benefits, neither of them has taken any action in that regard.

5. The learned counsel has further submitted that the third respondent, without any justification, has been recovering the loan amount from the salaries of the petitioners since 2013 on a monthly basis. Eventually, the learned counsel has contended that the petitioners have submitted Exhibits P5 to P8 representations before the third respondent, but they have not been so far considered on merits.

6. The learned counsel for the third respondent Co-operative Society has submitted that the liability of the petitioners is joint and several, and that there is no illegality

in the third respondent's effecting recovery from the petitioners' salary. She has further submitted that as regards the terminal benefits due to the fourth respondent, there is a statutory embargo against the recovery from those benefits.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondent Society, apart from perusing the record.

8. Indeed, there is not much factual controversy in the matter; on the other hand, the issue lies in a narrow compass. It is well established in terms of Section 128 of the Contract Act that the liability of the guarantor is co-extensive with that of the principal borrower. The creditor has the option of initiating recovery proceedings either against the principal borrower or against the guarantor or against all of them together. In other words, the liability is joint and several.

9. So long as a statute permits such a procedure of recovery against the guarantor to the exclusion of the principal borrower, this Court, in the name of equity, cannot interfere with the validly initiated recovery proceedings. It is

axiomatic to observe that equity gives way to statutory mandate.

10. At any rate, the fact remains that the third respondent has not considered the petitioners' Exhibits P5 to P8 representations. It suffices if the writ petition is disposed of with a direction to the third respondent to consider petitioners' Exhibits P5 to P8 representations in accordance with law, and pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

It is further made clear that no observation made presently shall come in the way of the third respondent's recovery of the loan amount from the salary of the petitioners, who, in fact, have an efficacious remedy *vis-a-vis* the fourth respondent.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-