

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 27007 of 2015 (A)

PETITIONER:

MATHEW, AGED 61 YEARS, S/O.THOMAS,
VADUTHALAKUZHAY HOUSE, PLANGODE,
CHITTILENCHERRY, ALATHUR, PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS:

1. JOINT REGISTRAR (GENERAL),
CO-OPERATIVE SOCIETIES (GENERAL),
OFFICE OF THE JOINT REGISTRAR (GENERAL)
FOR CO-OPERATIVE SOCIETIES (GENERAL),
PALAKKAD-678 001.
2. THE ASSISTANT REGISTRAR (GENERAL),
CO-OPERATIVE SOCIETIES (GENERAL),
OFFICE OF THE ASSISTANT REGISTRAR (GENERAL)
FOR CO-OPERATIVE SOCIETIES (GENERAL), ALATHUR
PALAKKAD-678 001.
3. THE ALATHUR SERVICE CO-OPERATIVE BANK LTD.,
BANK ROAD, ALATHUR, PALAKKAD-678 541.
4. SPECIAL SALE OFFICER,
ALATHUR SERVICE CO-OPERATIVE BANK GROUP,
ALATHUR, PALAKKAD-678 541.

BY SR.GOVERNMENT PLEADER SRI.K.C.VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 27007 of 2015 (A)

PETITIONER'S EXHIBITS:

EXT. P1 : TRUE COPY OF THE COMMUNICATION DATED 22-7-2015 ISSUED BY THE FIRST RESPONDENT

EXT. P2 : TRUE COPY OF THE COMPLAINT NO.834/15 FILED BEFORE THE SECOND RESPONDENT

EXT. P3 : TRUE COPY OF THE NOTICE DATED 8-7-2015 ISSUED FROM THE OFFICE OF THE FOURTH RESPONDENT

EXT. P4 : TRUE COPY OF THE AFFIDAVIT WITH THE STATEMENT DATED 16.07.15.

EXT. P5 : TRUE COPY OF THE COMPLAINT NO.835/15 FILED BEFORE THE SECOND RESPONDENT

EXT. P6 : TRUE COPY OF THE NOTICE DATED 8-7-15 ISSUED FROM THE OFFICE OF FOURTH RESPONDENT

EXT. P7 : TRUE COPY OF THE RECEIPT NO.261135 DATED 16-7-15.

EXT. P8 : TRUE COPY OF THE AWARD IN COMPLAINT NO.834/15 PASSED BY THE FOURTH RESPONDENT WITH TRANSLATION.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.27007 of 2015 A

Dated this the 29th day of September, 2015

JUDGMENT

The petitioner, a defaulter, faced recovery proceedings from the third respondent, which filed Complaint No. 834/2015 before the Co-operative Arbitration Court, Alathur. It is not in dispute that initially the petitioner has been served with a notice. Eventually when Exhibit P8 award was passed, the petitioner straightaway approached this Court by filing the present writ petition.

2. The singular contention of the learned counsel for the petitioner is that after entering his appearance, though the petitioner filed Exhibit P4 counter affidavit in the arbitration proceedings, the Arbitration Court proceeded with the matter and rendered Exhibit P8 award without considering any of the defences set up by the petitioner.

According to him, there is infraction of the principles of natural justice and also incurable procedural lapses on the part of the primary adjudicatory authority.

3. The learned Government Pleader, on instructions, has, however, submitted that in spite of service of notice the petitioner has not chosen to contest the matter. He has also pointed out that Exhibit P4 is dated 16.07.2015, the date on which the award was rendered.

4. Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

5. Usually, once there is an efficacious alternative remedy, as is the case in the present instance, under Section 82 of the Kerala Co-operative Societies Act, 1969, this Court will not be inclined to interfere with the award of the primary adjudicatory authority. In the present instance, a perusal of Exhibit P8 award amply reveals that, even if the

award were to be ex parte, it is absolutely laconic. The tone and tenor of the adjudicatory authority seems to be that as the respondent Bank filed the arbitration case, it is presumed that the Bank has proved its case and accordingly, an award has been rendered.

6. Further, assuming that despite service of notice the petitioner has remained absent, Exhibit P8 award does not even reflect the factum of the petitioner remaining ex parte, leave alone the Arbitration Court considering the counter affidavit said to have been filed by the petitioner.

7. In the above factual background, I am inclined to hold that there is non-adherence on the part of the Arbitration Court to the principles of natural justice and the award, in my view, suffers from incurable procedural irregularities.

8. In the facts and circumstances, this Court sets aside Exhibit P8 award and further remands the matter to

the Arbitration Court to be decided afresh after affording an opportunity of hearing to the petitioner. It is further made clear that if the petitioner once again absents himself from participating in the trial of the matter, it is entirely open for the Arbitration Court to record the said factum and render an award.

With the above observations, the writ petition is disposed of.

Dama Seshadri Naidu, Judge

tkv