

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C) .No. 28630 of 2014 (C)

PETITIONER(S) :

K.H.ABDULLA, AGED 60 YEARS,
S/O.HASSAN, KONNAMKUDY, PERUMBAVOOR P.O.,
ERNAKULAMD DISTRICT.

BY ADV. SRI.PRAVEEN K. JOY

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
INDUSTRIES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. THE DISTRICT COLLECTOR,
ERNAKULAM-682 018.

3. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, KAKKANAD,
ERNAKULAM-682 018.

BY GOVERNMENT PLEADER SRI. MUHAMMED SHAFI.M.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 10-02-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) .No. 28630 of 2014 (C)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1.TRUE PHOTOCOPY OF THE NOTICE DATED 15/10/2014 OF
THE 3RD RESPONDENT.

EXT.P2.TRUE PHOTOCOPY OF THE PETITION DATED 27/10/2014
BEFORE THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS:

EXT.R3(a) - TRUE COPY OF THE LETTER DATED 26/3/2001.

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P.(c) No.28630 of 2014-C

Dated this the 10th day of February, 2015

JUDGMENT

The petitioner is running a small scale unit under the name and style "Swapna Bone Meal Co. Pvt. Ltd.," at Perumbavoor. In the year 1997, the petitioner approached the 3rd respondent seeking a loan facility. Though his application was forwarded, working capital has not been released. Again, in the year 1997, the petitioner approached the 3rd respondent for getting working capital. However, the 3rd respondent did not release the amount to the petitioner. But, now the petitioner received Ext.P1 notice from the Office of the 3rd respondent alleging that an amount of ₹1,00,000/- has been released to him as Margin Money Loan in the

year 1997 and the loan has become inoperative due to default in repayment. According to the petitioner, Ext.P1 notice is a time barred demand and no amount can be realised from the petitioner under Ext.P1. Now, the claim is seen put forward after 17 years and the liability is barred by limitation. Feeling aggrieved, the petitioner submitted a detailed petition before the 2nd respondent. But the 2nd respondent has not taken any steps on receipt of Ext.P2 representation.

2. The 3rd respondent has filed a counter statement contending that the petitioner has availed a Margin Money Loan of ₹1,00,000/- on 20/7/1999 for setting up an industrial unit in the name and style "M/s Swapna Bone Meal Company Pvt. Ltd." He had executed an agreement on 28/6/1999 for availing Margin Money Loan as per the Rules. As per the condition of the agreement, the loanee is liable to repay the loan amount with interest. The petitioner had not repaid any amount towards interest or principal. In response to the notice issued to the petitioner demanding the arrear amount due to the 3rd

respondent, the petitioner sent Annexure-R3(a) reply notice dated 26/3/2001 and had requested to adjust the Margin Money Loan dues from the investment subsidy and release the balance investment subsidy to him. Accordingly, an amount of ₹19,240/- was adjusted on 5/10/2001 towards interest dues of Margin Money Loan from the investment subsidy sanctioned to his unit. Though notice had been issued to the petitioner on 20/6/2001, he has not paid any amount. Therefore, again, a registered notice was issued on 20/8/2003 demanding the balance amount due from the petitioner. Hence Revenue Recovery requisition for realisation of the amount due from the petitioner was sent as early as on 24/12/2003. Thus, the total amount claimed from the petitioner as dues is ₹1,22,002/-. But no amount was got collected through Revenue Recovery so far.

3. Going by the averments in the writ petition, it could be seen that the petitioner has wilfully suppressed the material facts disclosing the nature of loan transaction. What is inferable from the averment

is that he has not received any amount as loan from the 3rd respondent. But in the counter statement filed by the 3rd respondent, it is specifically stated that he has availed a Margin Money Loan of ₹1,00,000/- on 20/7/1999 for setting up his industrial unit. It is pertinent to note that this fact is also not disclosed in the writ petition. Going by Annexure- R3(a) reply notice sent by the petitioner, it is seen that the petitioner has availed a loan from the 3rd respondent and he defaulted the repayment. Consequently, the 3rd respondent has issued a notice dated 7/11/2000 demanding the arrear due to the 3rd respondent. Thus, it could be seen that the proceedings had been initiated as early as in the year 2000 itself against the petitioner and the Revenue Recovery proceedings were initiated against the petitioner in the year 2003 itself. Thus, the 3rd respondent demanded the loan amount within the period of limitation and thereafter, he was continuing under the threat of the Revenue Recovery proceedings. If the demand was initiated within the period of limitation, the petitioner cannot

contend that the realisation of the arrear amount is barred by limitation. The Revenue Recovery proceeding is only mechanism for realisation of the amount only and the pendency of the Revenue Recovery proceeding does not obliterate the right of the 3rd respondent to realise the amount from the petitioner, if the demand was made within the period of limitation.

4. Moreover, a person who has wilfully suppressed material facts before the court is not entitled to get any relief under the writ jurisdiction envisaged under Article 226 of the Constitution of India. The writ petition fails on that account also.

In the above view, this writ petition is devoid of merits and dismissed accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge