

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 34713 of 2014 (L)

PETITIONER : -

MOHAMMED IQBAL A.T,
S/O.MUHAMMED KUNJI HAJI,
KUNHAMINA MANZIL, P.O.KAVVAYI,
PAYYANNUR-670307.

BY ADV.DR.K.P.PRADEEP

RESPONDENTS :-

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF CO-OPERATION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. MADAYI CO-OPERATIVE RURAL BANK LTD. NO.F 1233,
P.O.MADAYI, VIA PAYANGADI, KANNUR,
REPRESENTED BY ITS SECRETARY.
3. THE JOINT REGISTRAR (CO-OPERATIVE SOCIETIES),
(ARBITRATOR), J R OFFICE, CIVIL STATION,
KANNUR-670002.

R2 BY ADV.SRI.M.SASINDRAN
BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 34713 of 2014 (L)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : COPY OF THE NOTICE DATED 18.6.2014 IN ARC N.804/2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P2 : COPY OF THE PLAINT DATED 27.1.2014 FILED BY THE 2ND RESPONDENT BEFORE THE 3RD RESPONDENT IN ARC NO.804/2014.

EXHIBIT P3 : COPY OF THE STATEMENT OF OBJECTION DATED 10.10.2014 FILED BY THE PETITIONER TO THE 3RD RESPONDENT IN ARC NO.804/2014.

EXHIBIT P4 : COPY OF THE LETTER NO.8419/14/AEL DATED 27.11.2014 ISSUED TO THE PETITIONER FROM THE OFFICE OF THE 3RD RESPONDENT.

EXHIBIT P5 : COPY OF THE AWARD IN ARC 804/2014 DATED 30.07.2014 OF THE 3RD RESPONDENT.

EXHIBIT P6 : COPY OF THE STATEMENT OF ACCOUNTS FROM 1.1.2010 TO 11.12.2014 IN MTNA 1506210900099 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.ATO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 34713 of 2014

Dated this the 07th day of August, 2015

JUDGMENT

The petitioner, a borrower, faced recovery proceedings from the second respondent Bank before the third respondent, the learned Arbitrator. Having suffered Exhibit P5 award, the petitioner has filed the present writ petition on the ground that no sufficient opportunity was granted to the petitioner at the time of adjudication. In essence, Exhibit P5 award is said to be *ex parte*.

2. The learned counsel for the petitioner has strenuously contended that when the matter stood posted on 30.07.2014 for appearance of the parties, the petitioner did appear on that date, when according to the learned counsel, no hearing took place. It is the singular contention of the learned counsel for the petitioner that the petitioner had not been given any notice concerning the subsequent

dates of hearing, yet, in course of time, the petitioner, to his surprise, came to know that an award was passed on the very same date, i.e. on 30.07.2014.

3. The learned counsel for the respondent Bank has submitted that on 30.07.2014, the very first date of hearing, the matter was adjudicated upon and award was passed. According to him, the question of intimating the petitioner concerning subsequent adjournments does not arise.

4. Heard the learned counsel for the petitioner, the learned counsel for the respondent, as well as the learned Government Pleader, apart from perusing the record.

5. Though this Court is in appreciation of the speedy disposal undertaken by the third respondent, it is, nevertheless, difficult to understand how the matter, more particularly a contested one, was disposed of on the very date of admission. A perusal of Exhibit P5, though in vernacular, with the help of the learned counsel for the respondent Bank, reveals that it is very cryptic and does not record any plea on the part of the petitioner as a matter of his defence. I am inclined to conclude that Exhibit P5 is, more or less, an award *ex parte*.

6. The learned counsel for the respondent Bank, to his credit, has submitted that instead of getting caught in the technicalities, the Bank is willing to have the matter reheard before the third respondent, provided the A.R.C. can be disposed of within a time frame.

7. At this juncture, the learned counsel for the respondent Bank has submitted that the petitioner at times stays overseas, and it is difficult for the third respondent to ensure proper service of notice. As a result, he has suggested that this Court may fix a particular date for hearing, dispensing with the need of putting the petitioner on notice by the third respondent. The learned Government Pleader, on his part, has agreed to the said proposal and offered 03.09.2015 as a convenient date.

8. Having regard to the respective submissions of the learned counsel for the petitioner and the learned counsel for the respondent, this writ petition is disposed of by setting aside Exhibit P5 award. Consequently, the matter is remanded to the third respondent with a further direction to consider A.R.C. No.804/2014 on merits, in accordance with law, after affording an opportunity of hearing to the

petitioner, as well as the respondent Bank, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

It is, however, made clear that if, for whatever reason, the learned Arbitrator could not take up the matter for hearing on 03.09.2015, the agreed date, it is entirely open for the learned Arbitrator to fix any other date or dates under due notice to the parties to the proceedings, and dispose of the ARC within two months from the date of receipt of this judgment.

With the above observations, this writ petition is disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-