

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 34885 of 2014 (I)

PETITIONER:

J.ARULAPPAN, AGED 63 YEARS,
S/O.JOSEPH, ARUVI, PALOORKONAM,
NEMAM P.O, THIRUVANANTHAPURAM 20.

BY ADVS.SRI.A.CHERIAN
SRI.NAVEEN THOMAS

RESPONDENTS:

1. SALE OFFICER,
KALLIYOOR SERVICE CO-OPERATIVE BANK LTD.,
OFFICE OF THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETY (GENERAL), KALLIYOOR - 696 042.
2. SECRETARY,
SERVICE CO-OPERATIVE BANK LTD, KALLIYOOR,
PURAVACHAMBALAM NEMOM, THIRUVANANTHAPURAM - 695 020.

R2 BY ADV. SRI.SUMAN CHAKRAVARTHY
R2 BY ADV. SRI.SANDEEP T.GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1. COPY OF THE ACCOUNT VOUCHER OBTAINED FROM 2ND
RESPONDENT DATED 8.11.14.

EXHIBIT P2. COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE 2ND
RESPONDENT DATED 11.11.14.

EXHIBIT P3. REPLY TO THE EXHIBIT P2 ISSUED BY THE 2ND RESPONDENT DATED
9.12.14.

RESPONDENTS' EXHIBITS :

EXHIBIT R2(A): TRUE COPY OF THE AWARD DATED 29.11.2007 IN ARC NO.
875/2007.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 34885 of 2014 (I)

Dated this the 20th day of July, 2015.

JUDGMENT

The petitioner, a businessman said to be practicing traditional ayurveda medicine, has a grievance that though he has never borrowed any amount from the second respondent Bank, it has subjected him to recovery proceedings and has been threatening to recover the alleged dues by taking recourse to revenue recovery proceedings.

2. The learned counsel for the petitioner has submitted that neither the petitioner has taken any loan nor has he been put on notice concerning the demand for recovery, at any point of time. According to him, the second respondent obtained an ex parte award from the Arbitration Court and has been threatening the petitioner and two other alleged guarantors with the revenue recovery proceedings against them.

3. The learned counsel for the petitioner has also contended that when he submitted Ext.P2 application under the provisions of the Right to Information Act seeking information concerning the

loan, the second respondent issued Ext.P3 reply contending that the provisions of the Right to Information Act do not apply to the respondent Bank. He has further submitted that when he contacted one of the members of the Board of the respondent Bank, he was provided Ext.P1 statement of account, through which the petitioner came to know about the alleged loan.

4. The learned counsel has strenuously contended that the petitioner has also approached the Secretary of the respondent Bank and also the Registrar ventilating his grievance, but neither of them has responded. Eventually, the learned counsel has contended that the whole process said to have been initiated by the respondent Bank to recover the amounts concerning the non-existing loan has been vitiated.

5. The learned counsel for the second respondent Bank has, on the other hand, submitted that the petitioner obtained a loan of ₹50,000/- on 21.12.2001 by providing two sureties, both of whom are Government employees. On the petitioner's default, contends the learned counsel for the second respondent, the respondent Bank initiated recovery proceedings and obtained Ext.R2(A) award from the

Arbitration Court.

6. It is the specific contention of the learned counsel for the respondent that the petitioner did participate in the hearing before the Arbitration Court, though the two sureties remained ex parte. He has also submitted that having obtained Ext.R2(A) award dated 29.11.2007, the respondent Bank has already laid execution proceedings which are said to be pending.

7. Finally, the learned counsel for the respondent Bank has drawn my attention to the relief sought by the petitioner to contend that the petitioner wants Ext.P1 to be quashed, though the fact remains that it is only a statement of account provided to the petitioner at his own request. In a sense, it is the contention of the learned counsel for the respondent Bank that Ext.R2(A) award has not been challenged, and as such, there can be no hindrance against the respondent Bank's proceeding with the execution of the award.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank, apart from perusing the record.

9. Though the learned counsel for the petitioner has submitted before the Court that the petitioner has never availed himself of any

loan, curiously the petitioner has never taken the plea in the writ petition. He has further contended that he has approached the Secretary of the respondent Bank and also the Registrar ventilating his grievance concerning the recovery proceedings initiated by the respondent Bank. No proof has been filed before the Court to establish the said factum of his approaching the said authorities.

10. It is the singular contention of the learned counsel for the petitioner that the petitioner has not been put on notice at any point of time. On the contrary, Ext.R2(A) reveals that the petitioner did appear before the Arbitration Court. At this juncture, the learned counsel for the second respondent has also submitted that the petitioner filed a signed statement before the Arbitration Court requesting for more time to repay the borrowed amount. For the reasons not forthcoming, the respondent Bank has not chosen to file before the Court the said document. The fact, however, remains that the records of Ext.R2(A) award reveals to the effect that the petitioner has participated in the arbitration proceedings.

11. Indeed, there is force in the contention of the learned counsel for the second respondent that the petitioner has not chosen

to, for the reasons known to him, question Ext.R2(A) award; instead, he has assailed Ext.P1 statement of account which is only a matter of detail provided to the petitioner by the respondent Bank on the petitioner's request.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned counsel for the respondent Bank, I do not see any merit in the writ petition. It is accordingly dismissed. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

