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W.P.No.22440 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.22440 of 2024
and WMP No.24440 of 2024

Kumutham

... Petitioner

-Vs-

- 1.The District Public Health Officer
O/o.the District Public Health Office
Erode & District.
- 2.The Regional Medical Officer
Primary Health Centre
Modakurichi & Post, Erode District.
- 3.The Secretary
P.E.65 Modakurichi Circle Teachers
and Public Servants Co-operative
Thrift and Credit Society Limited
No.7, Kooturavu Poona(Co-operative Park)
Modakurichi, Erode District-638 104.

4.Palanivel

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for entire records connected with the impugned order of the 1st respondent's letter in Na.Ka.No.2471/A2/2024 dated 19.06.2024 and quash the same.



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For Petitioner : Mr.R.Amburosh
For Respondents : Mr.M.Bindran
Additional Government Pleader for R1 & R2
Mr.E.P.Senniyangiri for R3

ORDER

This writ petition has been filed challenging the impugned letter of the 1st respondent dated 19.06.2024, wherein the 1st respondent has directed the loan amount with interest payable by the 4th respondent to be recovered from the petitioner.

2.The case of the petitioner is that she is working as a staff Nurse in the 2nd respondent Primary Health Centre. The 4th respondent was also working as a Junior Assistant and he borrowed loan from the 3rd respondent Society. The petitioner stood as a guarantor for the loan that was taken by the 4th respondent.

3.The further case of the petitioner is that the 4th respondent was convicted and sentenced in a case involving an offence under Section 138 of the Negotiable Instruments Act, 1881. The 4th respondent was also terminated from service based on this judgment passed by the trial Court. Thereafter, the recovery was not made from the 4th respondent and straightaway the impugned letter came to be issued by the 1st respondent directing the entire amount to be recovered from the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.



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4. When the matter came up for hearing on 07.08.2024, this Court wanted to ascertain as to whether any steps were taken to recover the dues from the 4th respondent or straightaway proceedings have been initiated against the petitioner since the petitioner stood as a guarantor for the loan taken by the 4th respondent. The matter was directed to be posted today.

5. The learned counsel for the 3rd respondent Society submitted that the 4th respondent had borrowed a total sum of Rs.4,90,000/-. The petitioner stood as a guarantor for the said loan. The loan amount along with interest was recovered from the monthly salary of the 4th respondent till February 2015 when the 4th respondent was terminated from service on account of his conviction and sentence for offence under Section 138 of the Negotiable Instruments Act, 1881. The learned counsel further submitted that the 4th respondent filed an appeal and even in the appeal, the judgment of the trial Court was confirmed. Thereafter, the 4th respondent has absconded and his whereabouts are not known. The learned counsel submitted that as on date, a total sum of Rs.4,80,780/- is due and payable towards principal and a sum of Rs.6,32,017/- is payable towards interest. It was submitted that the petitioner stood as a guarantor and therefore the amount has to be recovered only from the petitioner.

6. Heard Mr.R.Amburosh, learned counsel for petitioner, Mr.M.Bindran, learned Additional Government Pleader for R1 & R2 and Mr.E.P.Senniyangiri, learned counsel



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7.It is now too well settled that where a person stands as a guarantor for a loan, the creditor can recover the loan from the principal borrower or from the guarantor. The guarantor cannot object to the recovery by taking a stand that the creditor must first take steps against the principal borrower and only thereafter come behind the guarantor. The law on this issue is too well settled. Once the amount is recovered from the guarantor, the guarantor steps into the shoes of the creditor and he can recover the amount from the original borrower.

8.In the case in hand, the respondents are not able to recover the amount from the 4th respondent beyond February 2015 since the 4th respondent was terminated from service and the whereabouts of the 4th respondent is not known after his conviction and sentence for offence under Section 138 of the Negotiable Instruments Act, 1881 and which was also confirmed by the Appellate Court. Therefore, there is no other alternative available except to recover the amount from the petitioner, who stood as a guarantor.

9.In the light of the above discussion, the impugned letter of the 1st respondent dated 19.06.2024, does not suffer from any illegality warranting the interference of this Court. It was brought to the notice of this Court that a legal notice was issued by the 4th respondent to the effect that he will settle the entire loan amount and that the



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same should not be recovered from the petitioner. Such undertaking given by he 4th respondent remains in the paper and the 4th respondent has not taken any steps to repay back the loan. Therefore, till the 4th respondent comes forward to settle the entire loan amount with interest, the amount has to be recovered from the petitioner only in installments.

10.In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order : Yes /No
KP

To

1.The District Public Health Officer
O/o.the District Public Health Office
Erode & District.

2.The Regional Medical Officer
Primary Health Centre
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N.ANAND VENKATESH. J.,
KP

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