

Abraham Vs. the District Industries Centre,kottayam

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Court : Kerala

Decided On : Feb-06-2014

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : Abraham

Respondent : The District Industries Centre,kottayam

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI THURSDAY, THE 6TH DAY OF FEBRUARY 2014 17TH MAGHA, 1935 WP(C).No. 8387 of 2012 (W)

----- PETITIONER(S): ----- ABRAHAM, AGED 76 YEARS, S/O. ITHACK, VADAKARAMCHERIL PALLIPRATHUSSERY P.O., VAIKOM, KOTTAYAM DISTRICT. BY ADVS. SRI. V.G. ARUN SRI. T.R. HARIKUMAR RESPONDENT(S): ----- 1. THE DISTRICT INDUSTRIES CENTRE, KOTTAYAM- 686001, REPRESENTED BY ITS GENERAL MANAGER.

2. THE DEPUTY TAHSILDAR (REVENUE RECOVERY), VAIKOM, KOTTAYAM DISTRICT-686141.

3. THE VILLAGE OFFICER, VAIKOM VILLAGE, VAIKOM, KOTTAYAM DISTRICT-686141. BY GOVERNMENT PLEADER SRI. R. RANJITH THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2014, THE COURT

ON THE SAME DAY DELIVERED THE FOLLOWING: PJ WP(C).No. 8387 of 2012 (W) ----- APPENDIX PETITIONER(S) EXHIBITS ----- EXHIBIT P1: TRUE COPY OF THE NOTICE ISSUED BY2D RESPONDENT DATED168-2011. EXHIBIT P2: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE R1 DATED129-2011. EXHIBIT P3: TRUE COPY OF THE

ORDER

G.O.(RT)NO.207/2012/ID DATED42-2012 ALONG WITH ONE TIME SETTLEMENT SCHEME. EXHIBIT P4: TRUE COPY OF THE

ORDER

NO.C1/1670/12 DATED263-2012. RESPONDENTS' EXHIBITS ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ A.V. RAMAKRISHNA PILLAI, J.

----- W.P.(C) No. 8387 of 2012 ----- Dated this the 6th day of February, 2014

JUDGMENT

Exts.P1 and P4 are under challenge in this writ petition. The petitioner has also sought for other directions against respondents 1 and 2 to include the petitioner's loan arrears in category no.II (mistakenly noted as 'category No.IV' in the prayer portion though it is specifically averred in the writ petition as 'category no.II') of Ext.P3 [G.O.(Rt.) No.207/2012/ID dated 04.02.2012] and for other benefits.

2. The petitioner, who is a septuagenarian, was conducting a lime shell processing unit at Vaikom, for which he availed a margin money from the 1st respondent during the year 1994. The loan amount was 60,000/-. The period of repayment was 10 years. As the petitioner got sick subsequently and had to undergo a cardiac surgery, he could not run the unit during the year 2005 W.P.(C) No. 8387 of 2012 ..2.. and; the unit was closed down in the year 2006 and; the entire machinery became rendered useless; it is averred. In the meantime, the respondents initiated revenue recovery proceedings against the petitioner for

recovering an amount of 2,16,591/- and interest. The petitioner filed a representation before the 1st respondent requesting to write off the entire amount due towards margin money. Though it was filed on 12.09.2011, the same was not considered; it was alleged. Meanwhile, the Government introduced a scheme for one time settlement for the defaulters of margin money. Ext.P3 is the copy of the said scheme. As per Ext.P3, there are three categories. The petitioner alleges that though his case can be included in the second category in which it is stated that industrial enterprises, which do not exist and are totally defunct, will be permitted to settle and close the loan account making one time payment of the remaining principal amount due in lump, he was not W.P.(C) No. 8387 of 2012 ..3.. included in that category. However, he was included in category no.VI. On account of that, the petitioner is compelled to pay 50% of the interest over and above the principal amount due. That is why the petitioner has come up before this Court.

3. In the counter filed by the 1st respondent, they maintain the stand that as per Clause no.II of the one time settlement scheme, the units covered are those which have no industrial assets and which are totally defunct. It was pointed out that though the petitioner's unit was became defunct, it is having industrial assets and; therefore, the petitioner's loan can be classified under Clause VI only. Therefore, according to the 1st respondent, he is bound to pay 50% of interest also over and above the principal sum due.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter. W.P.(C) No. 8387 of 2012 ..4..

5. The petitioner seeks the benefit of category no.II of Ext.P3, which reads as follows; "Industrial enterprises which do not exist and are totally defunct and industrial assets are not available will be permitted to settle and close the loan account by making a one time payment of the remaining principal due in lump. The entire amount of interest and penal interest will be waived." (Emphasis added) 6. The stand taken by the 1st respondent is that the petitioner's loan can be included in category no.VI, which reads as follows; "Loanee/enterprises who have availed Margin Money Loans/and where the enterprise set up with such loans are now totally defunct beyond revival in the present conditions as duly certified by the

Manager, District Industries Centre will be allowed to settle/close the loan account by making a One time payment of the amount of principal due in lump and 50% of the interest and penal interest as on the date of OTS will be waived." (Emphasis added) 7. Under both clauses, an industrial unit, if became defunct, is entitled to the benefit of the scheme. However, for being included in category no.II, the defunct industrial unit should not have any industrial assets. The defunct units, which are having industrial assets can be classified only under category no.VI. In the instant case, W.P.(C) No. 8387 of 2012 ..5.. the petitioner has averred that the industrial unit was closed down in the year 2006 and the entire machinery became rendered useless. The petitioner was aged 76 at the time of the filing of this writ petition. If a lime shell processing unit was not functioning 2006 onwards, the only reasonable presumption that can be drawn is that there will not be any valuable asset to be classified as an industrial asset within the meaning of category no.II of Ext.P3 scheme. It is also relevant to note that on the basis of the interim direction of this Court, the petitioner has remitted the principal sum due as on the date of the interim order. The reasoning behind the classification between Clause II and Clause VI is that if the loanee is having industrial assets, he can make use of the same either by re-utilizing it or by selling it off. Here, in the instant case, there is no question of revival at all either by reusing it or by raising any sum by selling off the scraps. Therefore, this Court is of the definite view that the W.P.(C) No. 8387 of 2012 ..6.. petitioner is entitled to be included in category no.II of Ext.P3 scheme. Therefore, the writ petition is disposed of making it clear that the petitioner is entitled to be included in category no.II of Ext.P3 scheme and; therefore, he is not liable to pay any further sum towards loan. Sd/- A.V. RAMAKRISHNA PILLAI, JUDGE bka/-

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