

Surendran, vs C.Chandra Babu,

Surendran, vs C.Chandra Babu,

SooperKanoon Citation : sooperkanoon.com/1906183

Court : Kerala

Decided On : May-30-2019

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appeal No. : RP/382/2019

Appellant : Surendran,

Respondent : C.Chandra Babu,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE THURSDAY, THE 30TH DAY OF MAY 2019 / 9TH JYAISHTA, 1941 RP.No. 382 of 2019 IN WP(C). 31815/2006 AGAINST THE ORDER/JUDGMENT IN WP(C) 31815/2006 of HIGHCOURT REVIEW PETITIONER/S: 1 SURENDRAN, AGED 65 YEARS S/O. SUKUMARAN, T.C. THIRUVANANTHAPURAM-695008.

2 VALSALAKUMARI, D/O. SAROJINI, VALSALA COTTAGE, VELLAMKULATHALA, IROOPPARA, THIRUVANANTHAPURAM-695584. BY ADVS. SRI.SHIRIZ ABDULLA SRI.K.ABDUL NASSAR RESPONDENT/S: 1 C.CHANDRA BABU, KOCHUPUTHUVELVEEDU,

AMBALATHARA, MUTTATHARA, THIRUVANANTHAPURAM-695009. 2
CHANDRANMOHAN, S/O. SAROJINI, VALSALA COTTAGE,
KOCHUPUTHUVELVEEDU, AYIKKARAVEETTUMURIYIL,
AMBALATHARA, MUTTATHARA, THIRUVANANTHAPURAM-695009. 3
DISTRICT LABOUR OFFICER, THIRUVANANTHAPURAM-695024. 4 T.
GANGADHARAN, S/O. THABUVAN NADAR, AGED 48 YEARS,
KUZHINJANAM VILA, NADUTHATTUVEEDU, ERRICHALLOOR,
KARODU, KUTTUKADA P.O., 506.THIRUVANANTHAPURAM-695506.
5 S. KESAVAN, AGED 57 YEARS, S/O. SANAKARAN NADAR,
IDAVILAKON VEEDU, ARAYOOR, CHENKAL, MARYAPURAM P.O.,
RP.No. 382 of 2019 2 THIRUVANANTHAPURAM-695122. 6 K.
SUKUMARANAN, S/O. KRISHNAN, AGED 55 YEARS,
KALLUTHATTUVEEDU, KARUMKULAM, PUTHIYATHURA P.O.,
THIRUVANANTHAPURAM- 695526. 7 K. KESAVAN, AGED 60 YEARS,
S/O. KOCHAPPI, POTTENVILLA, KIZHAKKATHUPUTHENVEEDU,
KIZHAKKEECHKOLLA, CHENKAL, VETTAVILLA P.O.,
THIRUVANANTHAPURAM-695132. 8 N. VIJAYAN, AGED 39 YEARS,
S/O. NAKULAN, VADALIKKOOTTAMVEEDU KARODU, KAKKAVILA
P.O., THIRUVANANTHAPURAM - 695506. 9 G. SATHYANESAN,
VIATHICKUZHYPUTHEN VEEDU, VENKODAMBE VACHAKADA P.O.,
THIRUVANANTHAPURAM-695506. 10 C. BABU, AGED 40 YEARS,
S/O. CHELLAYYAN, VARUVILLA VEEDU, KULATHOR,
NALLAOORVATTOM, ELAMOOTTUKADA P.O.,
THIRUVANANTHAPURAM-695122. 11 M. DASAN , S/O. MARCOSE,
AGED 60 YEARS, KUTTAVILA, PUTHENVEEDU, KARUMKULAM,
PUTHIYATHURA P.O., THIRUVANANTHAPURAM-695526. 12
PALAYYAN, S/O. APPAVU NADAR, AGED 59 YEARS, KANIYAN VILA
VEEDU, KARODU, KAKKAVILA P.O., THIRUVANANTHAPURAM-
695506. 13 N. VELAYUDHAN, AGED 37 YEARS, S/O. NAKULAN,
VADALYKUDUMBA VEEDU, KARODU, KAKKAVILA P.O.,
THIRUVANANTHAPURAM-695506. 14 D. JOSEPH, S/O. DAVEED,
AGED 59 YEARS, THUVARAM THOTTAM PUTHEN VEEDU,
KANJAMPAZHANJI P.O., THIRUVANANTHAPURAM- 695525. 15 J.

RAMAYYAN, AGED 53 YEARS, S/O. JOSEPH, ENNAVILA VEEDU, KARODU, KAKKAVILA P.O., THIRUVANANTHAPURAM-695506. 16 S. TITUS, S/O. SAMUEL, AGED 34, PINKULAMVEEDU, KARODU, RP.No. 382 of 2019 3 KAKKAVILA P.O., THIRUVANANTHAPURAM-695506. 17 Y. NESAMONY NADAR, S/O. YOHANNAN NADAR, AGED 52 YEARS, THAZHAMKAL VADAKATHU PUTHENVEEDU, KULATHUR, UCHAKKADA P.O., THIRUVANANTHAPURAM-695506. 18 K. JOHNRAVIDAS, AGED 39 YEARS, S/O. KUTTAN, NEDIYAVARPUATHUVALPUTHENVEEDU, NALLOORVATTOM, PLAMOODUKADA P.O., THIRUVANANTHAPURAM - 695122. 19 K.KANAKARAJ, AGED 37 YEARS S/O.PADMANABHAN NADAR, PANAYARAKKALA VEEDU, KARODU,POZHIYOOR P.O., THIRUVANANTHAPURAM-695513. 20 M.JOSEPH, AGED 60 YEARS S/O.MANUEL, UTTUKUZHIMELE PUTHEN VEEDU, ARUMANOOR, POOVAR P.O., THIRUVANANTHAPURAM-695525. 21 P.THANKARAJ, AGED 40 YEARS S/O.PADMANABHAN NADAR, PANAYARAKKALA VEEDU, KARODU,POZHIYOOR P.O., THIRUVANANTHAPURAM-695513. 22 A.VELAYUDHAN, ELLUVILA VEEDU, KULATHOOR, UCHAKKADA P.O., THIRUVANANTHAPURAM-695506. 23 P.THANKAYYAN, AGED 63 YEARS S/O.PODIYAN, KANNAKUZH, VADAKKEKARA PUTHENVEEDU, KULATHOOR, UCHAKKADA P.O., THIRUVANANTHAPURAM- 695506. 24 Y.STEEPHEN, AGED 58 YEARS S/O.YESUNESAN, KUZHIVELIVILAKAM MALE PUTHANVEEDU, ARUMANOOR, POOVAR P.O., THIRUVANANTHAPURAM-695525. 25 J.THOMAS, AGED 44 YEARS S/O.JOSEPH, KANJIRAM NINA PUTHENVEEDU, KARUMKULAM, PUTHIYATHURA P.O., -695526. 26 NESOMANI, AGED 45 YEARS S/O.DEVASAHAYAM NADAR, RESIDING AT PERUMMARATHU VILA VEEDU, KULATHOOR, PLAMOOTTUKKADA-695122. RP.No. 382 of 2019 4 27 K.THOMAS, AGED 44 YEARS S/O.KAMARU NADAR, THUNDUVILA PUTHENVEEDU, ERRICHALLOR, KARODU, PLAMUTTUKADA P.O., THIRUVANANTHAPURAM-695122. 28 K.KUNJUKRISHANAN, AGED 47 YEARS S/O.KUNJAN NADAR,

CHAKKACHIVILAKATHU VEEDU, KULATHOOR, POZHIOOR P.O.,
THIRUVANANTHAPURAM- 695513. 29 JNANAMUTHAN, AGED 59
YEARS S/O.KUTTY NADAR, KEEZHEKUZHINJAM VILA
THECHKAKARA, PUTHENVEEDU, KARODU P.O.,
THIRUVANANTHAPURAM- 695506. 30 P.MANIYAN, PENA NINNA
PUTHENVEEDU, KARUMKULAM, PUTHIYATHURA P.O.,
THIRUVANANTHAPURAM-695526. 31 S.ACHUTHAN, AGED 56
YEARS S/O. SUBRAMANYAN NADAR, PINKULAM KIZHAKKEVEEDU,
KARODU, KAKKAVILA P.O., THIRUVANANTHAPURAM-695506. 32
P.THANKARAJAN, AGED 56 YEARS S/O.PONNU, THENGUVILA
VEEDU, ERRICHELLOOR, KARODU, MUTTUKADA P.O.,
THIRUVANANTHAPURAM-695011. 33 S.PONNUMANI, AGED 59
YEARS S/O.SUBRAMONIAM, CHERUKKAVILA VEEDU, KARODU,
KARODU P.O., THIRUVANANTHAPURAM-695506. 34 V.JOSEPH,
AGED 54 YEARS S/O.VELAYUDHAN, PULLANAVILA
MALEPUTHENVEEDU, KARODU, PLAMOODUKADA P.O.,
THIRUVANANTHAPURAM- 695122. 35 N.SOMAN, AGED 51 YEARS
S/O.NESAMANY NADAR, KALLUVILA VEEDU, KARUMKULAM,
PUTHIYATHURA P.O., THIRUVANANTHAPURAM-695526. 36
N.JARNADASAN NADAR, AGED 47 YEARS RP.No. 382 of 2019 5
S/O.NESAMANY NADAR, IDAVILLAKAM VEEDU, KARODU, KARODU
P.O., THIRUVANANTHAPURAM-695506. 37 C.RAJENDRAN, AGED 40
YEARS S/O.CHELLAPPAN, ELLUVILA VEEDU, KARODU, KAKKAVILA
P.O., THIRUVANANTHAPURAM. 38 S.PALAYYAN, AGED 45 YEARS
S/O.SANKARAN, MANNANVILA VEEDU, ERICHALLOOR, KARODU,
PLAMOODUKADA P.O., THIRUVANANTHAPURAM- 695122. 39
N.RAVIKUMAR, AGED 35 YEARS S/O.NAKULAN, RESIDING AT
VADALICKOOTTAM VEEDU, KARODU, KAKKAVILA P.O.,
THIRUVANANTHAPURAM-695506. 40 E.THOMAS, AGED 40 YEARS
S/O.ENON NADAR, PINKULAM VEEDU, KARODU, KAKKAVILA P.O.,
THIRUVANANTHAPURAM-695506. 41 A.NELSON, AGED 47 YEARS
S/O.ANANTHAPPAN, THUNDAVILA VEEDU, KARODU, POZHIOOR
P.O., THIRUVANANTHAPURAM-695513. 42 C.VISHWANATHAN,

AGED 48 YEARS S/O.CHELLAYYAN,
UTTUKUZHICKARAKAVUMUGHAMVEEDU, KULATHOOR,
POZHIYOOR P.O., THIRUVANANTHAPURAM- 695513. 43
P.GEORGE, AGED 34 YEARS S/O.PADMANABHAN NADAR,
IDACHIRAPERUMPADAR VEEDU, KARODU, POZHIYOOR P.O.,
THIRUVANANTHAPURAM-695513. 44 P.VALSALAM, AGED 43 YEARS
S/O.PONNUMUTHAN, PANANINNAPUTHENVEEDU, KARUMKULAM,
PUTHIYATHURA P.O., THIRUVANANTHAPURAM-695526. 45
J.WILSON, AGED 53 YEARS S/O.JOHNSON, PANJIKALA
KIZHAETHATTUVEEDU, ARUMANOOR, POOVAR P.O.,
THIRUVANANTHAPURAM. 46 V.SATHYANESAN, RP.No. 382 of 2019
6 AGED 51 YEARS S/O.VELAYUDHAN, PUTHENVILAKOM
KALATHILVEEDU, KARODU, POZHIYOOR P.O.,
THIRUVANANTHAPURAM-695513. 47 R.RAJU, AGED 45 YEARS
S/O.RAJAPPAN, KANNANVILAVEEDU, KULATHOOR, POZHIYOOR
P.O., THIRUVANANTHAPURAM-695513. 48 C.AGSTHI, AGED 56
YEARS S/O.CHINNAPPAN, KUNNUVILA VEEDU, KULATHOOR,
POZHIYOOR P.O., THIRUVANANTHAPURAM-695513. 49
N.KRISHNAN, AGED 42 YEARS S/O.NAKULAN, VADALIKUTTOM
VEEDU, KARODU, KAKKAVILA P.O., THIRUVANANTHAPURAM-
695506. 50 J.NESAN, AGED 456 YEARS S/O.JOSEPH, PARUTHIVILA
PUTHENVEEDU, KARODU, KAKKAVILA P.O.,
THIRUVANANTHAPURAM-695506.

51 TAHSILDAR (RR), R.D.O. OFFICE, FORT P.O.,
THIRUVANANTHAPURAM- 695023. 52 WELFARE FUND INSPECTOR,
TODDY WORKERS, WELFARE FUND, ULLOOR,
THIRUVANANTHAPURAM-695011. BY ADVS. SMT.A.C VIDYA,GP
SRI.KOSHY GEORGE THIS REVIEW PETITION HAVING BEEN
FINALLY HEARD ON 30.05.2019, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING: RP.No. 382 of 2019 7

ORDER

The review petition is filed by the respondents 1 and 2 in the writ petition. The writ petition was filed challenging an order passed under Section 33C(2) of the Industrial Disputes Act. The parties are referred to, in accordance with their status before in the Labour Court. The writ petition was filed by the opposite party No.4 in the claim petition. The challenge was sustained. While disposing the writ petition, in the impugned order itself passed, the order indicates that the recovery was primarily directed against opposite parties 3 and 4 in the claim petition and, in case recovery cannot be effected from them, it can be resorted against opposite party 1 and 2 in the claim petition. Opposite party 1 and 2 are the respondents 1 and 2 in the writ petition and the review petitioners herein.

2. While sustaining the challenge, this Court directed

recovery from opposite party 1 and 2 along with opposite party No.3, this resulted in filing the review petition. According to the review petitioners, since there was no direction by the Labour Court fastening liability primarily on opposite party 1 and 2, this Court committed a mistake in directing opposite party 1 and 2 to pay the amount along with the opposite party No.3. The learned counsel for the employees also does not dispute this aspect .

3. On going through the impugned order I find, the

primary direction was against opposite party 3 and 4. Since the RP.No. 382 of 2019 8 liability of 4th respondent, opposite party was exonerated by this Court, what remains is the direction against the opposite party No.3. It is only in case the recovery is impossible from opposite party No.3, recovery from opposite party 1 and 2 can be effected. It is to be noted that the appeal filed by the third opposite party against the Judgment of this Court also ended in dismissal. Accordingly, review petition is allowed with the following directions: i) The recovery shall be strictly in accordance with the

order of Labour Court except to the extent of ordering

recovery from opposite party No.4. ii) It is made clear that recovery first shall be initiated against the opposite party No.3 and only when it is impossible to recover,

further proceedings shall be initiated against opposite party 1 and 2. Accordingly, the order of recovery is modified to the extent as above. Sd/- A.MUHAMED MUSTAQUE JUDGE LEK RP.No. 382 of 2019 9 APPENDIX PETITIONER'S/S EXHIBITS: ANNEXURE A1 TRUE COPY OF THE ORDER NO.M 2-7087/06 OF THE REVENUE RECOVERY TAHASILDAR DATED 23.02.2019.

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