

Radhakrishnan Pavoov Vs. State of Kerala

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Court : Kerala

Decided On : May-26-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Radhakrishnan Pavoov

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY,THE26H DAY OF MAY20155TH JYAISHTA, 1937 WP(C).No. 14147 of 2011 (P) ----- PETITIONER(S): ----- RADHAKRISHNAN PAVOOR, AGED50YEARS, PAVOOR HOUSE, THAROPOLAR P.O. PONMERI VIA, VADAKARA, KOZHIKODE DISTRICT. BY ADV. SRI.JOHN JOSEPH(ROY) RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA, SOCIAL WELFARE DEPARTMENT SECRETARIAT THIRUVANANTHAPURAM, PIN-695 001.

2. KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION LTD., DISTRICT OFFICE P.M.KUTTY ROAD, ERINJIPPALAM P.O., KOZHIKODE-673 524.

3. THE ASSISTANT EDUCATIONAL OFFICER, NADAPURAM, KOZHIKODE DISTRICT-673 525. ADDL. RESPONDENTS* Addl.4. THE DEPUTY DIRECTOR

OF EDUCATION OFFICE OF THE D.D.(EDN.) NEAR MANANCHIRA,
KOZHIKODE Addl.5. THE ASST. EDUCATIONAL OFFICER OFFICE OF A.E.O.
KUNNUMMEL, VATTOLY P.O. VIA. KAKKATTIL, KOZHIKODE DISTRICT.
(*ADDL.R4 & R5 ARE IMPEADED AS PER

ORDER

DATED0902.2012 IN IA.17692/2011) Addl.6. THE TAHASILDAR (RR) TALUK
OFFICE, VADAKARA, KOZHIKODE DISTRICT. (*ADDL.R6 IS IMPEADED AS
PER

ORDER

DATED2803.2012 IN IA.4726/2012) R,R2 BY ADV.
SRI.C.E.UNNIKRISHNAN,SC,K.S.B.C.DEVP.CO R BY ADV. GOVERNMENT
PLEADER R2 BY ADV. SRI.JAYAPRADEEP. V, SC, KSBCDC R BY
GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING BEEN
FINALLY HEARD ON2605-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: WP(C).No. 14147 of 2011 (P) APPENDIX PETITIONERS
EXHIBITS: EXT.P1 COPY OF THE ALLEGED LETTER ISSUED BY THE2D
RESPONDENT TO THE3D RESPONDENT DATED89.10. EXT.P2 COPY OF
THE LAWYER NOTICE DATED93.11. EXT.P3 COPY OF THE REPLY
DATED114.01. EXT.P4 COPY OF THE LETTER ISSUED BY THE PETITIONER
DATED176.09. EXT.P5 COPY OF THE NOTICE ISSUED BY THE DEPUTY
TAHSILDAR (R.R) VADAKARA DATED1912.11. EXT.P6 COPY OF THE

JUDGMENT

IN R.P NO.801 OF 2012 IN W.A NO. 220/2012 DATED2609-2-0143 OF THIS
HON'BLE COURT. EXT.P6 COPY OF THE NOTICE NO.E-331/2011-12/KSBCDC
DATED2402.12 ISSUED BY THE DEPUTY TAHSILDAR (R.R) VADAKARA (AS
PER I.A NO.5786 OF2012 RESPONDENTS EXHIBITS: NIL // TRUE COPY // P.A
TO JUDGE. SB K. VINOD CHANDRAN, J.

===== W.P.(C) No.14147 of 2011 - P
===== Dated this the 26th day of May, 2015

JUDGMENT

The petitioner is aggrieved with the revenue recovery proceedings initiated against the petitioner for recovery of debts due from the petitioner. Admittedly the petitioner availed of a loan of Rs.30,000/- from the 2nd respondent by execution of an agreement on 14.05.2001. Even as per the averments in the original petition, the loan was disbursed on 11.07.2001 with repayment schedule of 60 months duration. Hence, the repayment should have been completed by 11.07.2006. The petitioner's contention is that, the present recovery proceedings initiated is beyond the limitation period as stipulated under the Limitation Act, 1963.

2. The petitioner also relies on a decision of the Hon'ble Supreme Court reported in Sampuran Singh v. 2 W.P.(C) No.14147 of 2011 - P Niranjana Kaur [1999 (2) KLT (SN) 83] and a decision of the Division Bench of this Court reported in Devukutty Amma v. Madhusudanan Nair [1995 (2) KLT118 to buttress his contentions. The learned Counsel for the petitioner also relies on a judgment of the Division Bench in W.A No.220 of 2012, wherein, a co-obligant's liability was set at naught again for reason of limitation. The judgment in the review sought for by the 2nd respondent is produced at Ext.P6.

3. The learned Counsel for the respondent however submits that, in W.A No.220 of 2012, the co-obligant's liability was negated only for the reason that the acknowledgment was not by the said co-obligant but by the petitioner herein. The 2nd respondent Corporation would rely on the alleged acknowledgment made by the petitioner as is indicated in Ext.P4 produced along with an interlocutory application. The said document is dated 17.06.2009 and the petitioner has stated so in the said document:

3. W.P.(C) No.14147 of 2011 - P : :

624. 00 / BC/ RIP /32 18.05.2009- (75/52) , 18.05.2009- dl dl19 () . . d\o Z . . Hca
, . .

4. The learned Counsel for the petitioner would contend that the petitioner had paid instalments only up to 2004 and default having been committed then, the recovery proceedings ought to have been initiated within three years from the date of such default. The petitioner also has a contention that if at all Ext.P4 is

considered as an acknowledgment, the same can only be enforced for the last instalment since limitation 4 W.P.(C) No.14147 of 2011 - P for recovery of each instalment should relate back to the date when the same was due. This Court however is unable to countenance such contention since, the specific period of payment of the loan was 60 months. If the loan was foreclosed on default, then necessarily the same should have crystallised into a proper proceeding for recovery before the limitation period as determined from that date. The creditor has the option to wait until the entire repayment period is over for initiating recovery proceedings. In such circumstance, the decision cited above at Sampuran Singh (supra) is not applicable.

5. The admitted averments in the writ petition are that, the loan was disbursed on 11.07.2001 and it had a repayment period of 60 months. The last date of repayment would be on 11.07.2006 and the creditor would have the option to file a suit for recovery within the period of limitation as provided under the Limitation Act before 11.07.2009. The 5 W.P.(C) No.14147 of 2011 - P alleged acknowledgment is dated 17.06.2009, within the period in which the 2nd respondent could have validly initiated a recovery proceedings.

6. The next contention is with respect to the recital in Ext.P1, which according to the learned Counsel does not lead to any inference of an acknowledgment as such. A reading of the document also would indicate that, the petitioner had merely disputed the interest liability and had contented that exorbitant interest was raised. There is no acknowledgment of the liability as such. The petitioner has relied on Devukutty Amma (supra) to contend that unless there are specific words used in the acknowledgment, there cannot be an acknowledgment inferred merely from the fact that, the petitioner had acknowledged the debt on a later date.

7. Devukutty Amma (supra) was a case, in which the legal heirs of a debtor is said to have executed a pro-note in favour of the creditor. Admittedly the debtor died about 20 6 W.P.(C) No.14147 of 2011 - P years back, and in the pro-note there was no reference to the debt incurred by the deceased person and the recital was only to the effect that the payments due to the creditor as on the date of execution of pro-note would be paid by the executor. There being no reference to the debt

nor even the name of the deceased in the pro-note, the contention of the executor that the pro-note is devoid of consideration, was accepted by the Court.

8. The learned Counsel for the respondent would contend that, the judgment of the Division Bench in W.A No.220 of 2012 clearly held that, the acknowledgment now produced at Ext.P4, which was produced therein also, would apply only with respect to the person, who had executed it ie., the petitioner herein. That however cannot be held to be binding on the petitioner herein since the question whether there was actual acknowledgment of debt to find limitation was not considered by the Division Bench in that judgment. The Division Bench 7 W.P.(C) No.14147 of 2011 - P merely looked at the document said to have been executed by the original debtor and found that it cannot save limitation with respect to the liability of the surety. The document itself was not examined thoroughly nor was the petitioner herein a party in the said writ petition.

9. Ext.P4 admittedly is executed by the petitioner herein. There is no specific acknowledgment of the debt and it only disputes the exorbitant interest charged. The petitioner had specifically opposed the penal interest charged in the loan amount, which according to the 2nd respondent should be deemed to be the acknowledgment of the liability existing to the Corporation. The contention raised on behalf of the learned Counsel for the respondent that, there is a deemed acknowledgment as per Ext.P4 and that it was only on the request made by the petitioner that the revenue recovery proceedings were initiated cannot be countenanced. The revenue recovery proceedings are said to have been initiated in 8 W.P.(C) No.14147 of 2011 - P the year 2011, which is said to be within the period of limitation determined from the date of Ext.P4. This Court however is not inclined to accept the contention that Ext.P4 would lead to an acknowledgment of the liability.

10. Ext.P4 letter though does not dispute the liability, disputes the interest charged in the account. The respondent could have very well initiated proceedings within the limitation period as determined from the completion of period of re- payment of the loan. The mere fact that the revenue recovery proceedings were sought to be kept in abeyance by the petitioner and that the said request is complied with by the

creditor respondent cannot lead to extension of the limitation period. There should have been a specific acknowledgment of the liability for extension of the limitation period. It is trite that the expiry of period of limitation does not extinguish the debt, but merely takes away the remedy of recovery. If the 2nd respondent's contention is accepted then a mere demand notice 9 W.P.(C) No.14147 of 2011 - P from the creditor, served on the debtor, without any response should also be taken as an acknowledgment of liability. That cannot be and the acknowledgment should be specific and should reveal the intention of the debtor to extend the period of limitation, so as to extend the time for recovery and it cannot be lightly inferred. In such circumstance, the revenue recovery proceedings having been issued after the limitation period, the same is liable to be set aside on the strength of the binding precedent at State of Kerala v. Kalliyankutty [1999 (2) KLT146(SC)]. The writ petition hence would stand allowed. It is declared that the revenue recovery proceedings initiated against the petitioner, which is the subject matter of the writ petition, cannot be proceeded with. Sd/- K. VINOD CHANDRAN, JUDGE SB // true copy // P.A to Judge.

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