

(2014) 11 KL CK 0192

In the High Court Of Kerala

Case No : Writ Appeal Nos. 1396 and 1402 of 2014 in WP(C). 692/2014

John V. Cheriyan

APPELLANT

Vs

The Kerala State Financial Enterprises Ltd.

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0192

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : A.S.P. Kurup and Sadchith P. Kurup, Advocate for the Appellant;
Babu Varghese, Sr. Advocate and Alexander C.V., Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. These two Writ Appeals have been filed by the common appellant against the judgment dated 29th May, 2014 in Writ Petition No. 692/2014 and the order dated 29-08-2014 passed in I.A. No. 10634 of 2014. Both the appeals have been heard together and disposed of by this common judgment.

2. Appellant had taken financial assistance from the Kerala State Financial Enterprises Limited. On default being committed, the Financial Enterprises initiated proceedings for recovery under the Kerala Revenue Recovery Act, 1968. Challenging the said proceedings, Writ Petition No. 692 of 2014 was filed. This Court passed an interim order permitting the petitioner to deposit Rs. 10,00,000/- each in two instalments. The Court further directed that, subject to payment, One Time Settlement facility preferred by the petitioner shall be placed before the Board.

3. Petitioner, in pursuance of the interim order could deposit only 10 lakhs. Thereafter, he filed a petition for extension of time by order dated 29-08-2014, noticing that as on 31-8-2014, the liability of the appellant is 51,79,454/-. The appellant, aggrieved by the recovery charges which have been calculated by the Bank at the rate of 7.5% which has been included in the computation (which is

marked as Ext. R1(a) at page No. 63 in Writ Appeal No. 1396 of 2014), preferred Writ Appeal No. 1396/2014. The appellant submitted that he is ready to deposit the entire amount provided the collection charges are not recovered.

4. The Learned counsel for the petitioner further relied upon Ext. P5 letter dated 10-12-2013 of the Kerala State Financial Enterprises Ltd. In the said letter, the following was stated on behalf of the respondent:

"In compliance with the direction of the Hon"ble High Court of Kerala in the above Writ Petition we had given a chance for hearing vide 2nd referred letter on 12-11-2013 and your representative Sri. B. Rasheed represented you before us in our office and offered the remittance in consultation with your good self. We have not yet received any reply from your part in connection with the remittances.

It is intimated from AGM (RR), HO, Thrissur that the entire amount was transferred to RR and waiting for RR certificate from District Collector. In this circumstances, the only solution is to remit the entire arrears within the branch on non RR basis with a collection of 1% as service charge. Hence you are requested to clear the entire dues on or before 31-12-2013.

We hereby dispose the representation accordingly in compliance with the direction of the Hon"ble High Court of Kerala".

5. The respondent had come up with the offer that the appellant has to remit the entire amount with 1% service charge on non RR basis. The learned counsel for the respondents submits that one time settlement was also arrived and that facility was extended to the appellant which was not complied with by the appellant. Considering the facts of the present case, it does appear that the appellant has not followed either one time settlement or the instalment facility which was extended to him.

6. The learned counsel for the appellant has come up with the prayer that he may deposit the entire amount with the respondent Financial Enterprises provided no collection charges is levied As far as the revenue recovery proceedings are concerned, only a notice has been issued and the said authorities have not proceeded to take any further steps so far. The Bank having already permitted the appellant to deposit 1 % service charge on condition of depositing entire amount with the Enterprise on non RR basis, we are of the view that both the Writ Appeals deserve to be disposed of to meet the ends of justice with the following directions:-

i) Appellant shall deposit an amount of Rs. 10,00,000/- (Rupees ten lakhs only) before the respondent on or before 31-12-2014. After the said deposit, the respondent/Financial Enterprises shall provide a fresh statement of accounts after adjusting the said amount without reflecting the collection charges to the appellant. The Balance said amount shall be cleared off by the appellant on or before 30th June, 2015. The respondent shall not levy any collection charges

from the appellant except 1% service charge.

ii) In any event, if any default is committed by the appellants in complying any of the directions as stated above, it shall be open for the first respondent to proceed with the recovery proceedings.

Both these Writ Appeals are disposed of as above.