
(2015) 12 KL CK 0018
In the High Court Of Kerala
Case No : W.P. (C) No. 26876 of 2014 (H)

K. Sukumaran

APPELLANT

Vs

The Senior Manager and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Kerala Co-operative Societies Act, 1969 — Section 37

Citation : (2016) LabIC 879

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : R. Rajesh, Advocate, for the Appellant; T.R. Harikumar, SC, for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent Bank, and the learned Government Pleader, apart from perusing the record.

2. The petitioner, having served the second respondent, retired on 31.10.2013 as Station Master. While he was in service, in 2001, along with two others, he stood guarantee to the loan obtained by one of his colleagues from the first respondent Bank.

3. Having committed default, the principal borrower retired from service in 2009 and later died in 2011. Two other sureties, too, also retired in 2011 and 2012 respectively.

4. In 2013, after his retirement, the petitioner sought a "No Liability Certificate" from his employer, who, in turn, issued Ext. P2 Liability Certificate dated 26.09.2014. Among the liabilities mentioned in the said certificate, item No. 4 pertains to the loan to which the petitioner stood guarantee way back in 2001. Aggrieved, seeking removal of item No. 4 from Ext. P2, the petitioner has filed

the present writ petition.

5. The learned counsel for the petitioner has submitted, first, that the entire loan has been barred by limitation; second, that by letting all other people retire, the first respondent Bank destroyed the legal options of the petitioner to have the recovery either from the principal borrower or from the guarantors or all of them by way of restitution or contribution. The learned counsel, in the alternative, has submitted that the petitioner earlier authorised the first respondent, in terms of Section 37 of the Kerala Co-operative Societies Act ("the Act" for brevity), to deduct the loan amount only from his salary, but not from his retirement benefits.

6. Since the respondent Bank has communicated to the second respondent, the petitioner's employer, to deduct the loan amount from the DCRG to be paid to the petitioner, the learned counsel contends that the salary as has been mentioned in Section 37 of the Act does not extend to the retirement benefits, especially DCRG. In support of his submissions, the learned counsel has placed reliance on *Surendran Vs. Mavelikara Primary Co-op. Agrl. and R.D. Bank Ltd.*, .

7. The learned counsel has further drawn my attention to Rule 3 of Part III of KSR to contend that any deduction from the DCRG could be effected only with a prior consent of the employee. According to the learned counsel, the consent the petitioner is said to have given in Ext. R1(d) is not under Rule 3 of Part III of KSR.

8. Summing up his submissions, the learned counsel has urged this Court to allow the writ petition with a direction to the second respondent to remove item No. 4 from Ext. P2 liability certificate.

9. Per contra, the learned counsel for the first respondent has submitted that in terms of Section 37 of the Act, salary includes the retirement benefits, which are nothing but accumulated salary. The learned counsel has submitted that time and again the Courts have held that notwithstanding Section 60 of CPC, in view of the non-obstante clause, Section 37 of the Act prevails in for the very Act has received presidential assent.

10. The learned counsel has further drawn my attention to Annexure R1(d) where the petitioner is said to have consented at the bottom of the agreement that the recoveries can be effected. According to him, that undertaking is without any restrictive reference to the salary.

11. The learned counsel has drawn my attention to Annexure R1(e) and contended that the first respondent had all along been diligent. In other words, though the first respondent served a demand on the third respondent in 2009 to deduct from the petitioner's salary, the employer remained inattentive.

12. Summing up his submissions, the learned counsel for the first respondent has submitted that the petitioner cannot be allowed to take shelter under technicalities. And, in terms of the guarantee he has provided, the petitioner is liable to pay the amount.

13. In the present writ petition, two issues seek the attention of this Court: whether Ext. R1(d) agreement entered into by the petitioner with the second respondent empowers the employer to recover the loan arrears even from the petitioner's retirement benefits? (2) whether, in terms of Annexure R1(e), the lapse on the part of the employer in not deducting from the petitioner's salary at the earliest point of time should visit on the petitioner with adverse consequences?

Issue No. 1:

14. Indeed, without much cavil, Section 37 of the Act provides for remedial mechanism for the creditor Bank to straight away deduct from the salary of the principal borrower or the guarantor without recourse to the due process of obtaining an award or a decree and then seeking remittances from the garnishee. Further not in dispute is the fact that the provision begins with a non obstante clause. Nevertheless, the moot question is whether the retirement benefits partake the character of salary.

15. In Surendran (supra), a learned Division Bench has lucidly expounded the legal principle involved in the issue. Their Lordships, after an elaborate consideration of the issue, have emphatically held that even guided by Section 37 of the Act, the term "salary" cannot be extended to the retirement benefits. I am, therefore, of the view that given the definitive pronouncement of the learned Division Bench, the first respondent cannot be heard saying that the salary includes the retirement benefits, especially DCRG, as well.

16. Of course, Rule 3 of Part III of KSR does entail deduction from DCRG. But it requires an express consent on the part of the employee, which is unavailable in the present instance. The learned counsel for the first respondent has made a feeble effort to convince me that Annexure R1(d) also contains an undertaking. The relevant portion reads as follows:

"I agree to effect recoveries and pass on the same to the Kollam District Co-operative Bank Ltd."

As has been rightly pointed out by the learned counsel for the petitioner, the undertaking pertains to the employer, rather than the employee whose undertaking is incorporated above the said extracted portion. A perusal of the Annexure R1(d) amply demonstrates that the petitioner's consent is confined to salary alone.

Issue No. II:

17. No doubt, on 19.09.2009, the first respondent Bank issued a communication to the second respondent seeking deductions from the salary of the petitioner. It may have similarly requested vis-?-vis other guarantors as well as the principal borrower, too. Evidently, the second respondent did not act on it. In that context, I am constrained to observe that the first respondent ought to have been vigilant in asserting its right and ought to have immediately taken remedial steps in the

face of the second respondent's inaction to respond to Ext. R1(e). It did not. Thus, for the lapses on the part of the first respondent in not pursuing its effective remedies, the petitioner cannot be made to suffer. In other words, the petitioner can be made to pay the amounts strictly in statutory terms and also in terms of his undertaking as per Section 37 of the Act, but not otherwise.

18. In a conspectus, I observe that the petitioner has successfully demonstrated that item No. 4 in Ext. P2 liability certificate has been wrongly incorporated. As a result, this Court directs the 2nd respondent to remove item No. 4 from Ext. P2 and issue a fresh liability certificate.

With the above observation, this writ petition is allowed. No order as to costs.