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(2002) 07 KL CK 0083

In the High Court Of Kerala

Case No : W.A. No. 1680 of 2002

Sukumaran APPELLANT

Vs

K.S.R.T.C. RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 60, 60(1)
Constitution of India, 1950 — Article 226

Citation : (2003) 115 CompCas 695 : (2002) 3 ILR (Ker) 98 : (2002) 2 KLJ 134

Hon'ble Judges : K. Thankappan, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Denizen Komath, for the Appellant; M.L. Sajeevan, for the Respondent

Judgement

Cyriac Joseph, J.—This Writ Appeal is filed against the judgment in O.P. No. 6840/02 which was disposed of by the learned Single Judge without granting the reliefs claimed in the Original Petition. The appellant herein is the petitioner in the Original Petition.

2. The appellant is employed as Coach Builder in the Kerala State Road Transport Corporation. He stood as surety for loans taken by a few persons from the Kerala State Financial Enterprises Ltd. As per the agreements executed between the appellant and the Kerala State Financial Enterprises Ltd., the appellant agreed that in case of default of payment of monthly instalments by the principal debtor, recovery of such amounts as may be fixed by the Kerala State Financial Enterprises Ltd. could be made from the salary of the appellant at source and also from his terminal and other benefits.

3. Consequent on default made by the four principal debtors for whom the appellant had stood as surety, the Kerala State Financial Enterprises Ltd. sought recovery of the amounts from the salary of the appellant. Recoveries are being effected by the first respondent Kerala State Road Transport Corporation from the salary of the appellant. Aggrieved by such recovery from his salary, the

appellant filed the Original Petition praying for a writ of prohibition restraining respondents 1 and 2, viz, KSRTC and the District Transport Officer, Kayamkulam Depot, KSRTC from effecting recovery from his salary in contravention of Section 60(1)(i) of the CPC and Article 102 of the Kerala Financial Code, Volume I. In the Original Petition there was also a prayer for direction to respondents 1 and 2 to consider Ext. P2 representation of the petitioner. The Original Petition was disposed of by the learned Single Judge at the admission stage itself holding that the petitioner was not entitled to any relief in the Original Petition. According to the learned Single Judge, when the petitioner allowed the third respondent to advance amounts to others on the basis of the guarantee given by the petitioner, he cannot now turn round and contend that he need repay the amount or recovery can be effected from his salary only subject to the limit provided in Section 60(1)(i) of the CPC and Article 102 of the Kerala Financial Code, Volume I. The learned Single Judge has also observed that the above mentioned provisions in the CPC and the Kerala Financial Code are applicable only to attachment ordered by Court. As the impugned recovery is on the basis of the undertaking and guarantee given by the petitioner in the documents executed by him with free will to effect recovery from his salary in case of default by the principal debtors, the learned Single Judge has taken the view that the petitioner cannot complain against recovery made from his salary consequent on the default by the principal debtors.

4. Having heard learned counsel for the appellant and having considered the materials placed on record, we do not find any valid reason to interfere with the impugned judgment. Admittedly the appellant had executed agreements with the third respondent Kerala State Financial Enterprises Ltd. agreeing that in case of default of payment by the principal debtors, recovery of such amounts could be made from his salary at source. Having entered into such agreements, the appellant is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India to challenge the recovery effected pursuant to the agreement executed by the appellant.

5. There is no merit in the contention of the appellant that recovery can be made only subject to the limitations u/s 60 of the CPC and Article 102 of the Kerala State Financial Code, Volume I. The provisions of Section 60 of CPC are applicable only to attachment and sale in execution of a decree and therefore the limit mentioned in Sub-section (1)(i) of Section 60 is not applicable to the recovery made from the salary of the appellant pursuant to the agreement executed by him with the third respondent. Similarly, the provisions contained in Article 102 of the Kerala State Financial Code, Volume I also have no relevance to recovery made from the salary of the appellant pursuant to the agreements executed by him with the third respondent. Hence, the learned Single Judge was right in rejecting the contentions of the appellant based on Section 60(1)(i) of the CPC and Article 102 of the Kerala State Financial Code, Volume I.

6. In the above circumstances, there is no merit in the appeal. The appeal is

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dismissed.

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