

(2009) 06 KL CK 0134
In the High Court Of Kerala
Case No : W.A. No. 1266 of 2009

The Chengamanad Service Co.Op. Bank Ltd.

APPELLANT

Vs

P.R. Mohanan and Others

RESPONDENT

Date of Decision : 19-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala High Court Act, 1958 — Section 5

Citation : (2009) 3 ILR (Ker) 240 : (2009) 2 KLJ 689 : (2009) 3 KLT 623

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : Anil K. Muhamed, for the Appellant; Benny Gervasis, G.P., for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The appellant is a Co-operative Society, registered under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act"). It filed the Writ Petition seeking a direction against the second respondent to discharge his statutory duty u/s 37(2) of the Act. The facts of the case are the following:

2. The first respondent is a surety for a loan availed of by one Mr. Prasad, who is no more. The loanee, as also the surety, defaulted to pay the amount due to the Society. The loan was disbursed on the strength of an agreement executed by the first respondent - surety u/s 37(1) of the Act. On default of payment by the first respondent, the appellant moved the second respondent - controlling officer for deduction of the amount due to the Society from the salary of the first respondent u/s 37(2) of the Act. Even after repeated requests, the said officer was sleeping over the matter. In the above background, this Writ Petition was filed by the appellant, seeking a direction to respondents 2 and 3 to recover an amount of Rs. 2,000/- per month from the salary of the first respondent. The second respondent is presently the controlling officer of the first respondent, who

draws and disburses his salary. The learned Single Judge dismissed the Writ Petition holding that the remedy of the appellant is to avail the remedies provided under the statute against default in payment as also for non compliance of Section 37(2) of the Act. The learned Judge noticed that the second respondent can be prosecuted for the offence of violation of Section 37(2). This Writ Appeal is filed by the writ petitioner - Secretary of the Society, feeling aggrieved by the said judgment

3. The learned counsel for the appellants submitted that the second respondent, who is an officer under the Government, has got a statutory duty u/s 37(2) of the Act and that if he fails to discharge that duty, the Society can approach this Court for issuing a mandamus against that respondent.

4. We feel that the above contention of the learned Counsel is subject to a rider that the Society has no other alternative efficacious remedy under law. But, learned Counsel would point out that the remedy under the statute is not efficacious. The right u/s 37(2) of the Act is one created by the provisions of the Act. Normally, if a debtor violates the terms of the loan agreement, the remedy of the aggrieved party is to move the competent court, get a decree and execute the same. In this case, for the benefit of the Society, a special right is created and for implementation of that right, remedies are also provided under the Act. If the employer does not act as mandated by Section 37(2) of the Act, he can be prosecuted u/s 94(5) read with Section 95 of the Act. Section 95 of the Act provides that for prosecution, sanction of the Registrar is required. Section 37(2) of the Act enables the Society to move unilaterally by determining the amount due to it and make a requisition. In certain cases, even if the entire amount legally due is paid, the Society may make further demands and contemplating such a situation, the legislature provided that prosecution for an offence u/s 94(5) can only be with the sanction of the Registrar. A special right is created by the legislature in favour of the Society, which has to be exercised subject to the limitations therein. So, the appellant cannot complain that the remedy provided under the statute is not efficacious. Further, for recovery of the amount, the usual general remedy is to approach the Arbitrator u/s 69 of the Act. The learned Single Judge dismissed the Writ Petition noticing the alternative remedies available to the appellant-Society. In such a case, the appellate court can interfere, only, if it is found that the decision of the learned Single Judge to decline jurisdiction under Article 226 of the Constitution of India is arbitrary or perverse. We find it difficult to hold that the learned Single Judge exercised the discretion illegally or in an arbitrary or perverse manner. Therefore, this appeal is not maintainable, going by the principles governing the appellate remedy available u/s 5 of the Kerala High Court Act: see the decision of the Division Bench of this Court in *Lakshmanan v. Roy Alexander* 1992 (2) KLT 634, wherein it was held as follows:

8. In this connection, we should remember that the exercise of the discretionary jurisdiction, one way or the other, under Article 226 of the Constitution of India,

has many facets and may require consideration from different angles. If in a particular case, a single Judge has exercised the discretion by adopting any one of the alternatives open to him in disposing of the original petition, it is not sufficient if the appellant urges before the appellate court that the court below or the learned single Judge could have exercised the discretion in some other way. The appellant should be able to convince the appellate court that the single Judge exercised the discretion arbitrarily or perversely to warrant interference in writ appeal. More than three decades ago, delivering the judgment of the Division Bench in *Rajalekshmi Motor Service, Kozhikode Vs. Govt. of Kerala and Others*, that great Judge M.S. Menon, J. in his illimitable and majestic style, laid down the law thus:

Iyengar, J. did not consider these factors as sufficient to decline interference, and in such a case, whatever may have been our own reactions in similar circumstances, we should not interfere unless we are satisfied that the decision is perverse. It is not contended that such is the case.

In *Neelakanta Kartha v. Registrar, Kerala Agricultural University* 1978 KLT 408, delivering the judgment of the Bench, Gopalan Nambiar, C.J., candidly stated the law thus:

We cannot certainly rule out what the learned Judge has stated as an unreasonable, much the less an impossible, view. The view appears to us to be certainly a plausible one, and is supported by the dictionary meaning of the term "pursuance", which the learned Judge has extracted. In cases and situations where the learned Judge has thumbed in favour of one of two plausible interpretations, it is a golden rule not to interfere in proceedings under Article 226. The learned Judge having dealt with the matter under Article 226 and taken a view which is certainly plausible, we do not think we would be justified in interfering.

One of us (Paripoornan, J.) delivering the judgment of the Bench in *Mayadevi v. Rajan* 1985 KLT 376, reiterated the above position in law and observed thus:

The view taken by the learned single Judge is certainly a plausible one. We may also state that even if two views are possible in the matter, it cannot be said that the view adopted by the learned single Judge is "perverse". On this reasoning also, no interference is called for in the writ appeal. See *Neelakanta Kartha v. Registrar* 1978 KLT 408 and *Rajalakshmi Motor Service v. Govt. of Kerala* 1959 Kar LJ 1425 at p. 1430 para. 14.

More recently, in *State of Kerala v. Balakrishnan* 1992 (1) KLT 420, another Bench of this Court, cited with approval the earlier three decisions and followed the ratio held down in the said cases.

9. In the light of the above four Bench decisions of this Court, it is for the appellants to establish that the decision of the learned single Judge is arbitrary or perverse. The appellants have failed to allege or prove that the decision of the

learned single Judge is arbitrary or perverse, to merit interference in writ appeal.

5. We are in respectful agreement with the above principles laid down by the Division Bench of this Court. Further, we also agree with the reasoning of the learned Single Judge for declining jurisdiction.

In the result, the appeal fails and it is dismissed.