

(1993) 06 KL CK 0065
In the High Court Of Kerala
Case No : W. A. No. 656 of 1993

Velayudha Kurup and others

APPELLANT

Vs

Dy. Tahsildar (RR) and others

RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:

Revenue Recovery Act, 1890 — Section 7

Citation : (1994) 2 KLJ 1

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : S. Gopakumaran Nair, for the Appellant;

Final Decision : Dismissed

Judgement

Jagannadha Rao, C.J.—The appellants who are seven in number, are the members of the Nandaivanam Charitable Society, Nagaroor Alatharamoodu, Thiruvananthapuram District, and the society itself was one registered under the provisions of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) (the learned Single Judge appears to have wrongly mentioned the society as a co-operative society coming under the Co-operative Societies Act, in his common judgment). It is now not in dispute that the seven appellants signed a bond in favour of the Khadi Board agreeing to repay the monies borrowed from the Khadi Board for the purpose of the said society. In the bond, a copy of which was placed before us by learned counsel for the appellant, the borrower in the preamble is shown as the society, but towards the end of the document all the appellants have also signed agreeing to repay the monies also agreeing that in case of default, the provisions of the Revenue-Recovery Act can be straightaway enforced against them. On the ground that there was default, a demand was issued under the Revenue Recovery Act, as per Ext. P2, u/s 33 of the Act. Then the appellants submitted Ext. P3 dated 16-10-1989 to the Minister for Revenue, but of no affect. Thereafter Ext.P4 was issued to the first appellant u/s 7 of" the Revenue Recovery Act. The main

question argued before the learned single judge was as to whether the appellants who were the then directors of the society were liable, even if they are now not the Directors. According to counsel for the appellants, the appellants, even when they were directors, were not the borrowers, and at any rate, when they ceased to be directors, the bond is not enforceable against them. The learned Single Judge rejected the contention and dismissed the writ petition. Hence this appeal. In this appeal, the first contention that is raised before us is that the appellants were not borrowers. We may here point out that from the bond, a copy of which is placed before us the following appears in Schedule TV:

The borrower/s has/have here unto put their respective hand/s and the respective common seals of the parties hereto have been hereunto seal and the common seal of the Lender has been hereunto affixed. The date and year first hereinabove written. The common seal of the (J) N. Velayudha Kurup, (2) Thyagarajn (3) Vijayakumar, (4) Sushama Devi, (5) Sasidharan, (6) Swarajan and (7) Sukumaran Asary.

The concluding part of the bond therefore clearly shows that the appellants signed the bond as borrowers which is clear from the word "borrowers". Further clause 17A of the bond extracted in the judgment of the learned Single Judge reads as follows:

The borrowers hereby agree that on breach of any of or all these conditions the borrowers shall personally, jointly and severally be liable for the amount of Rs. 1,30,000."- due to the lender at any time together with the interest due and unutilised grants, and all costs charges and expenses incurred by the lender for the realisation thereof which shall be recoverable from the properties of the borrowers movable or immovable as if it were arrears of land revenue under the provisions of the R. R. Act for the time being in force or in such other manner as the lender may deem fit provided that the sale proceeds of the goods hypothecated as shown under Schedule I are found inadequate to cover the amount of Rs.1,30,000/- and the interest unutilised grants, costs, charges and expenses incurred by the lender for the realisation thereof.

(emphasis supplied)

In our view, the use of the word " borrowers " and more so the use of the words "personally, jointly and severally" in clause 17A of the bond are a clear indication that the above said 7 persons signed by the bond as co-obligors making themselves liable for the amount covered by the bond. It cannot be said that they merely signed the bond on behalf of the society.

2. It is true that the opening part of the bond refers to the society as borrower. But in our view, a reading of the entire bond and in particular clause 17 A and the concluding part of it clearly establishes that all the appellants were co-obligors under the bond. Therefore all of them are liable.

3. The next question is, even if they are liable, whether they are liable when they

allegedly ceased to be the directors of the society. So far as the second contention is concerned, it is however now admitted before us that the appellants were the directors at the time of execution of the bond, and they are the directors even now to day, and at no point of time they ceased to be the directors of the society. Therefore the second question does not arise at all.

4. It must be noted that so far as the Khadi Board is concerned" it is not their concern as to the manner in which the money that was borrowed was subsequently utilised or misappropriated. Khadi Board is entitled to enforce the terms of the bond against the persons shown in the bond as borrowers. That being the right of the Khadi Board enforcement under the Revenue Recovery Act at the instance of the Khadi Board to recover the monies against the borrowers cannot be said to be wrong. Learned counsel for the appellants wanted to rely upon section 11 of the T-C Literary, Scientific and Charitable Societies Registration Act, 1955. Section 11 reads as follows:

11. Enforcement of decree against society-If a decree is against the person or officer named on behalf of the society, such decree shall not be executed against the property movable, or immovable, or against the body of such person or officer, but against the property of the society.

Obviously the above Section intends to protect office-bearers from being proceeded against in respect of amounts due from the society, as a separate entity. The section however is restricted to cases of decrees against the aforesaid persons. In our opinion, the learned Single Judge was right in coming to the conclusion that Section 11 had no application to the facts of the case, when the office bearers entered into a separate bond with the Khadi Board on their own volition thereby making themselves liable. Having made themselves liable, it is not open to them to resort to Section 11 of the Act.

For the aforesaid reasons, the writ appeal is dismissed.