

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 19091 of 2007(W)

PETITIONERS:

- 1. M/S LUCKY STAR WIRE BRICKS &
CONCRETE PRODUCTS, MAIKKAD, ANGAMALY,
REPRESENTED BY ITS MANAGING PARTNER,
V.A.VARGHESE, S/O.ANTHONY, VEMPLIATH HOUSE,
NEAR PRIVATE BUS STAND, V.I.P.ROAD, ANGAMALY,
ERNAKULAM-683572.**
- 2. V.A.VARGHESE, S/O.ANTHONY,
MANAGING PARTNER, M/S LUCKY STAR WIRE BRICKS &
CONCRETE PRODUCTS, VEMPLIATH HOUSE,
NEAR PRIVATE BUS STAND, V.I.ROAD, ANGAMALY,
ERNAKULAM- 683572.**

**BY ADV. SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN**

RESPONDENTS:

- 1. THE KERALA FINANCIAL CORPORATION,
VELLAYAMBALAM, THIRUVANANTHAPURAM-33,
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. THE CHIEF MANAGER,
THE KERALA FINANCIAL CORPORATION, BRANCH OFFICE,
1ST FLOOR, FINANCE TOWERS, KALOOR,
ERNAKULAM- 682017.**
- 3. THE DEPUTY COLLECTOR (RR),
KERALA FINANCIAL CORPORATION, BRANCH OFFICE,
1ST FLOOR, FINANCE TOWERS, KALOOR,
ERNAKULAM-682017.**

**4. THE DEPUTY THAHASILDAR (RR),
KERALA FINANCIAL CORPORATION, BRANCH OFFICE,
1ST FLOOR, FINANCE TOWERS, KALOOR,
ERNAKULAM- 682017.**

**5. THE DEPUTY THAHASILDAR (RR),
DISTRICT COLLECTORATE, ERNAKULAM.**

**BY ADV. SRI.M.M.SAYED MUHAMMED, SC, KFC
GOVERNMENT PLEADER SRI.M.R.SABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE PHOTOCOPY OF THE LETTER DT.2.1.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: TRUE PHOTOCOPY OF the LETTER DT.3.1.07 ISSUED BY THE 2ND RESPONDENT TO 4TH RESPONDENT.

EXT.P3: TRUE PHOTOCOPY OF THE RECEIPT DT.19.2.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P4: TRUE PHOTOCOPY OF THE RECEIPT DT.13.3.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: TRUE PHOTOCOPY OF THE LETTER DT.5.5.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: TRUE PHOTOCOPY OF THE LETTER SENT BY PETITIONER DATED 14.5.07 TO THE 2ND RESPONDENT.

EXT.P7: TRUE PHOTOCOPY OF THE LETTER DATED 2.6.07 SENT BY THE 2ND RESPONDENT TO 2ND PETITIONER.

EXT.P8: TRUE PHOTOCOPY OF THE ORDER DT.4.11.05 BEARING NO.43972/H3/2005/RD ISSUED BY GOVT. OF KERALA.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 19091 OF 2007
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Dated this the 28th day of September, 2007

J U D G M E N T

Petitioner was a defaulter to the 1st respondent and on an application filed by the petitioner for the benefit of one time settlement, that was allowed by Ext.P1. In Ext.P1, there was a condition that the suit which was filed by the petitioner against KFC should be withdrawn, for accepting the offer for one time settlement.

2. On the basis of Ext.P1, the petitioner paid amounts that are due to the 1st respondent and the suit was also withdrawn. Thereafter, when the title deeds that were deposited with the respondents were demanded to be returned, Ext.P5 communication was issued requiring the petitioner to remit collection charges, and the fee that the respondents had paid to its counsel for defending the suit filed and later withdrawn by the petitioner. Petitioner disputed his liability to pay these amounts, and by Ext.P7, the respondents reiterated its demand.

3. It is in this background this writ petition was filed challenging the aforesaid orders.

4. Pursuant to the interim orders that were passed by this court, on mutual negotiation, the dispute in regard to the fee paid by the Corporation to its counsel has now been settled.

5. Therefore, the only dispute that remains now is with regard to the demand for collection charges that was demanded by the 1st respondent. In so far as the liability of the petitioner for collection charges is concerned, though the proceedings for realisation under the Revenue Recovery Act were initiated, the liability was settled in a one time settlement, which was not in pursuance to the revenue recovery proceedings. Therefore, the amounts having not been recovered in pursuance to the proceedings under the Revenue Recovery Act, collection charges are not payable. This position has been accepted by this court in the decision reported in **Bhaskaran v. Sub Registrar (2005(3) KLT 150)**. That apart, in view of the proviso that is now added to Section 71 of the Revenue Recovery Act, it is the institution on whose behalf recovery is made, that is liable to pay the collection

charges and not the defaulter.

6. Therefore, the demand for collection charges cannot stand in the way of the 1st respondent in releasing the documents to the petitioner.

7. For these reasons, I dispose of the writ petition directing that the 1st respondent shall release the documents that are deposited by the petitioner, as expeditiously as possible, at any rate within a period of 3 weeks of receipt of a copy of this judgment. In view of the settlement that has been arrived at between the petitioner and the 1st respondent, there is no need for continuing the attachment, which shall also be lifted by the respondents.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp