

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 4TH DAY OF JULY 2024 / 13TH ASHADHA, 1946

WP(C) NO. 34607 OF 2015

PETITIONER:

SUBRAHMANIAN
AGED 49 YEARS, S/O.NAMPAN,
POONATHIL HOUSE, KUMARANPADI, NIRAMRUTHUR P O,
TIRUR.

BY ADVS.
SRI.R.T.PRADEEP
SMT.M.BINDUDAS

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR
COLLECTORATE, MALAPPURAM -676 505.
- 2 DEPUTY TAHSILDAR (REVENUE RECOVERY)
TALUK OFFICE, TIRUR -676 101.
- 3 SENIOR MANAGER
INDIAN OVERSEAS BANK, TIRUR, PIN- 676 101.
- 4 MAMMAN
AGED 44 YEARS, S/O. MATHAI,
S M M COMPLEX, EZHUR ROAD, NORTH MUTHOOR,
TIRUR P O, PIN- 676 101.

BY ADVS.
SRI.B.MOHANLAL
SRI.SUNIL SHANKAR, SC, INDIAN OVERSEAS BANK
SRI. ARUN AJAY SHANKAR (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.07.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

‘C.R.’

JUDGMENT

The petitioner has approached this Court challenging the revenue recovery proceedings initiated against him for the recovery of certain amounts due to the Indian Overseas Bank. The petitioner was a guarantor in respect of a loan extended to the 4th respondent. It is the case of the petitioner in the writ petition that the revenue recovery proceedings are barred by limitation.

2. A statement was filed by the 3rd respondent where it is stated that there is no question of the recovery proceedings being barred by limitation, as there was an acknowledgement of debt for the purposes of Section 18 of the Limitation Act, 1963. Reference is made in this regard to Exts.R3(b) and R3(c). Ext.R3(b) is dated 24-11-2014 and Ext.R3(c) is dated 13-12-2012. Ext.R3(b) is executed by the borrower, while Ext.R3(c) is executed by the petitioner. It is not disputed that if the date of Ext.R3(c)

acknowledgement of debt by the petitioner is taken into consideration, the revenue recovery proceedings are not barred by limitation. It is also pointed out that the personal guarantee executed by the petitioner clearly indicates that any acknowledgement by the principal debtor in relation to the subject matter of the guarantee shall be binding on the guarantor also. Therefore, it is not possible for this Court to hold that the proceedings under the Kerala Revenue Recovery Act, 1968, initiated against the petitioner are barred by limitation.

3. The learned counsel appearing for the petitioner then contended on the strength of the judgment of a learned Single Judge of this Court in ***Sam J. Mathew v. Deputy Tahsildar (RR); 2019 (3) KLT 641***, that the revenue recovery proceedings are barred on account of the provisions contained in the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as the 'SARFAESI Act'). It is submitted that for the same reasons

as found in the judgment of this Court in ***Sam J. Mathew (Supra)*** and in the light of the provisions contained in the SARFAESI Act, the revenue recovery proceedings would be barred.

4. A perusal of the judgment of this Court in ***Sam J. Mathew (Supra)*** indicates that this Court had followed the law laid down by the Supreme Court in ***Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corporation & Others; (2003) 2 SCC 455***, and had held that in the light of the provisions contained in Section 19 and Section 34 of the Recovery of Debts and Bankruptcy Act, 1993, (hereinafter referred to as the 'RDB Act') and in the light of the law laid down by the Supreme Court in ***Unique Butyle Tube Industries (Supra)***, revenue recovery proceedings in respect of any matter where the bank or financial institutions could have invoked the jurisdiction of the Debts Recovery Tribunal would stand barred, as Section 34 of the RDB Act does not save action under the Kerala Revenue Recovery Act, 1968. It is the contention of

the learned counsel for the petitioner that, Section 37 of the SARFAESI Act also contains a provision similar to that contained in Section 34 of the RDB Act and therefore, since the bank is entitled to initiate proceedings against the petitioner under the SARFAESI Act, the revenue recovery proceedings are barred.

5. The contention of the learned counsel for the petitioner cannot be accepted. Section 34 of the RDB Act reads as follows:

“Section 34: Act to have overriding effect.

(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the

Small Industries Development Bank of India Act, 1989 (39 of 1989)".

Section 37 of the SARFAESI Act reads as follows:

"37. Application of other laws not barred.

*The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) **or any other law for the time being in force**".*

There is a clear distinction between the wording used in Section 34 of the RDB Act and Section 37 of the SARFAESI Act. In Section 37 of the SARFAESI Act, it is clearly provided that the operation of the provisions of the SARFAESI Act will be in addition to, and not in derogation of, the enactments mentioned in that provision and also to 'any other law for the time being in force'. The words 'any other law for the time being in force' do not find a place in

Section 34 of the RDB Act. Therefore, the law laid down by the Supreme Court in ***Unique Butyle Tube Industries (Supra)***, followed by the judgment of a Division Bench of this Court in ***State of Kerala and Others v. HDFC Bank Limited and Others; ILR 2023 (1) KER 273***, and also by the judgment of the learned Single Judge of this Court in ***Sam J. Mathew (Supra)***, does not come to the aid of the petitioner. Though the learned counsel for the petitioner made efforts to establish that the words 'any other law for the time being in force' will not include the provisions of the Kerala Revenue Recovery Act, 1968, I am unable to accept the contention, as the word 'law' clearly includes all statutory enactments made by any legislature. The contention that the words 'any other law for the time being in force' in Section 37 of the SARFAESI Act must be confined to enactments in the nature of other enactments mentioned in the said Section is preposterous and cannot be accepted. When the meaning of the words used in the statute do not admit of any such interpretation, it is the

duty of the Court to apply the provision as it is without adding or subtracting anything to any word or term used in the statute. Speaking for the majority in ***Aswini Kumar Ghose v. Arabinda Bose, (1952) 2 SCC 237***; Patanjali Sastri C.J.I (as he then was) held:-

"It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

If the argument of the learned counsel for the petitioner is to be accepted this Court must delete the words 'any other law for the time being in force' from Section 37 of the SARFAESI Act. This is impermissible.

Writ petition fails and it is accordingly dismissed.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 34607/2015

PETITIONER'S EXHIBITS

EXHIBIT P1:- THE COPY OF NOTICE NIL DTD U/S.7 OF THE KERALA REVENUE RECOVERY ACT ISSUED BY 2ND RESPONDENT

RESPONDENT'S EXHIBITS

EXHIBIT R3(a) TRUE COPY OF PERSONAL CONTINUING GUARANTEE EXECUTED BY THE PETITIONER DATED 19-12-2006.

EXHIBIT R3(b) TRUE COPY OF REVIVAL LETTER EXECUTED BY THE 4TH RESPONDENT DATED 24-11-2014.

EXHIBIT R3(c) TRUE COPY OF REVIVAL LETTER EXECUTED BY THE PETITIONER DATED 13-12-2012.