

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

WEDNESDAY, THE 12<sup>TH</sup> DAY OF JUNE 2024 / 22ND JYAISHTA, 1946

WP(C) NO. 27416 OF 2021

PETITIONER/S:

KEEZHMADU SERVICE CO-OPERATIVE BANK, NO. 2681,  
ALUVA, ERNAKULAM DISTRICT, REPRESENTED BY ITS SECRETARY,  
PIN-683101.

BY ADVS.  
AJAI JOHN  
V.M.SAJAN(K/165/1994)

RESPONDENT/S:

- 1 THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),  
ALUVA, ERNAKULAM DISTRICT, PIN-683 101.
- 2 THE SPECIAL SALE OFFICER,  
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE  
SOCIETIES (GENERAL), ALUVA, ERNAKULAM DISTRICT, PIN-683 101.
- 3 SALI VELAYUDHAN,  
W/O LATE VELAYUDHAN.N.P, NADUPARAMBIL HOUSE, EDAYAPPURAM, ALUVA,  
PIN-683 101.
- 4 UDAYAKUMAR.N.V,  
S/O.LATE VELAYUDHAN N.P,NADUPARAMBIL HOUSE, EDAYAPPURAM,ALUVA,  
PIN-683 101.
- 5 SARITHA,  
D/O.LATE VELAYUDHAN.N.P,AND W/O.RAJEEV, PARIYARATHU HOUSE,  
VALLUVALLY, ERNAKULAM, PIN-683 519.

BY ADVS.  
M.P.ASHOK KUMAR  
BINDU SREEDHAR  
ASIF N

OTHER PRESENT:

SMT.K.B.SONY-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
12.06.2024, ALONG WITH WP(C).28342/2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

WEDNESDAY, THE 12<sup>TH</sup> DAY OF JUNE 2024 / 22ND JYAISHTA, 1946

WP(C) NO. 28342 OF 2021

PETITIONER/S:

- 1 SALI T.  
AGED 66 YEARS  
W/O.LATE VELAYUDHAN, NADUPARAMBIL HOUSE, EDAYAPPURAM, ALUVA,  
ERNAKULAM - 683 101.
- 2 UDAYAKUMAR N.V.  
NADUPARAMBIL HOUSE, EDAYAPPURAM, ALUVA, ERNAKULAM - 683 101.
- 3 SARITHA N.V.  
PARIYARATH HOUSE, VALLUVALLY, ALUVA, ERNAKULAM - 683 519.

BY ADVS.  
M.P.ASHOK KUMAR  
BINDU SREEDHAR(K/000317/2002)  
ASIF N(K/001564/2018)

RESPONDENT/S:

- 1 KEEZHMADU SERVICE CO-OPERATIVE BANK NO 2681  
GROUND FLOOR, EDAYPURAM, ALUVA, ERNAKULAM - 683 101, REP. BY  
IT'S SECRETARY.
- 2 THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)  
ALUVA, ERNAKULAM - 683 101.
- 3 THE SPECIAL SALE OFFICER  
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES  
(GENERAL), ALUVA, ERNAKULAM - 683 101.

BY ADVS.  
AJAI JOHN  
V.M.SAJAN(K/165/1994)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12.06.2024,  
ALONG WITH WP(C).27416/2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

CR

**JUDGMENT**

**[W.P. (C) Nos. 27416 & 28342 of 2021]**

1. Since both these writ petitions arise from the same Arbitration proceedings, I dispose both the writ petitions by a common judgment. The parties and documents are referred to according to the description in W.P(c) No.28342/2021.
  
2. The husband of the 1<sup>st</sup> petitioner and father of 2<sup>nd</sup> and 3<sup>rd</sup> petitioners, Sri. Velayudhan.N.P, availed of a loan of Rs.3,00,000/- from the 1<sup>st</sup> respondent Co-Operative Bank on 10.06.2008. On account of the default in repayment of the loan amount as per the Loan Agreement, the 1<sup>st</sup> respondent initiated arbitration proceedings under S.69 of the Kerala Cooperative Societies Act ('the Act' in short) and obtained Ext.P2 Arbitration Award dated 28.11.2011 in ARC No.3087/2011 against the said Sri. Velayudhan.N.P after giving notice to him. The 1<sup>st</sup> respondent Bank instituted execution proceedings through

the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The said Sri.Velayudhan.N.P received notice in the execution proceedings. Subsequently, he died on 24.02.2013.

3. W.P.(C)No.27416/2021 is filed by the 1<sup>st</sup> respondent impleading the legal representatives of Sri.Velayudhan.N.P as respondents 3 to 5, seeking direction to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to complete the execution proceedings including sale of the mortgaged property within a time limit.
4. W.P.(C)No.28342/2021 is filed by the petitioners challenging Ext.P2 award on the ground that it is an ex parte award and also to declare that the said Award cannot be executed without impleading the petitioners as legal representatives of the judgment debtor under Rule 74(4) of the Kerala Co-operative Societies Rules, 1969 ( 'the Rules' in short).
5. The 1<sup>st</sup> respondent filed a Counter Affidavit dated 08.07.2022 contending, inter alia that Ext.P 2 award is not an exparte award; that the Award was passed after giving notice to the borrower Sri.Velayudhan.N.P; that he died after receiving notice in the execution proceedings; that the petitioners are well aware

of the execution proceedings; that they are impleaded in the execution proceedings; that 1<sup>st</sup> respondent had been repeatedly demanding them to settle the loan; that they never contended that they are not parties to the execution petition; the 3<sup>rd</sup> petitioner has approached the 1<sup>st</sup> respondent by filing several applications for interest waiver and copies of the loan documents; and that by way of abundant caution, the 1<sup>st</sup> respondent has filed Ext.R1(m) Petition dated 05.04.2022 to implead and issue notice to the petitioners in the execution proceedings.

6. Heard learned Counsel for the petitioners Sri.M.P.Ashok Kumar, the learned counsel for the 1st respondent Sri.Ajai John representing Adv. Sri.V.M.Sajan and the learned Government Pleader Smt. K.B.Sony for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
7. The Counsel for the petitioners pointed out that the copy of the Award dated 28.11.2011 in ARC No.3087/2011 produced by the petitioners as Ext.P2 in the Writ Petition and the copy of the very same Award produced by the first respondent with its Counter Affidavit as Ext.R1(e) varies on material aspects and argued that there could not be two contradictory awards passed

on the same date in ARC No.3087/2011 and hence the Award is inexecutable. I sought instruction from the learned Government Pleader and she confirmed that the details in Ext.P2 are correct and mistakes happened in Ext.R1(e) when another copy was taken from the system when the original award was destroyed in flood. Accordingly, I treat Ext.P2 as the copy of the Award dated 28.11.2011 passed in ARC 3087/2011.

8. The learned counsel for the petitioners argued that the Bank has not impleaded the legal representatives of the original judgment debtor – Sri.Velayudhan.N.P in the execution proceedings within the period of limitation and hence the execution proceedings got abated. According to him, on account of the abatement of the execution proceedings, the orders cannot be given in W.P.(C) No.27416/2021 to expedite the execution proceedings. According to him, Section 76(a) of the Act provides that the Award of the Registrar shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court. According to him, on account of this provision, the Code of Civil Procedure is applicable to the execution proceedings of the Awards passed

under the Act and the Rules. He also pointed out that, as per Rule 74(4) of the Rules which provides that where a defaulter dies before the decree has been fully satisfied, an application under sub-rule (1) may be made against the legal representatives of the deceased and thereupon all provisions of this Rule shall apply, as if such legal representatives were the defaulters.

9. On the other hand, the learned counsel for the 1<sup>st</sup> respondent submitted that even if the Code of Civil Procedure is applicable, in view of Order XXII Rule 12, the Rules 3, 4, 8 of Order XXII relating to abatement are not applicable to the proceedings in execution of a decree or Order. As such, there is no abatement of the execution proceedings initiated by the Bank and the legal representatives can be impleaded at any point of time and that they are already on record.
10. After hearing the parties, I find that though the 1<sup>st</sup> respondent contends that the petitioners are impleaded in the execution proceedings to execute Ext.P2 award consequent to the death of the judgment debtor, there is nothing on record to prove that they are impleaded. Only after the filing these writ petitions, the 1<sup>st</sup> respondent filed Ext.R1(m) Petition dated 05.04.2022 to

implead the petitioners and to issue notice to them in the execution proceedings.

11. In view of Rule 74(4) of the Rules, the 1<sup>st</sup> respondent can proceed with the execution only after impleading the legal representatives of the deceased judgment debtor. Since the 1<sup>st</sup> respondent filed W.P.(C)No.27416/2021 seeking to expedite the execution proceedings without impleading the legal representatives of the judgment debtors, the said writ petition is liable to be dismissed.
  
12. In W.P.(C).No.28342/2021, the first prayer of the petitioners therein is to set aside the Award passed by the Arbitrator on the ground that it is an ex parte Award. I find from the records that the Award is not an ex parte one and the Award was passed after serving notice to the borrower, Sri.Velayudhan.N.P. It is clear from the records that Sri.Velayudhan.N.P received notice in the execution proceedings also. Ext.P2 Award does not show that Sri.Velayudhan.N.P was made exparte in the arbitration proceedings. Hence first prayer in W.P.(C)No.28342/2021 to set aside the Award on the ground that it is an exparte, is rejected.



13. The second prayer in W.P.(C).No.28342/2021 is to declare that the award cannot be executed without impleading the petitioners therein, who are the legal representatives of the late Velayudhan under Rule 74(4) of the Rules.
14. The legal issues involved are:
  - a. Whether Code of Civil Procedure is applicable to the execution proceedings to execute the Arbitration Award passed under the Act.
  - b. Whether there is abatement in case the legal representatives of the deceased judgment-debtor are not impleaded in the execution proceedings to execute the Arbitration Award passed under the Act.
15. Issue No.1: The counsel for the petitioners invited my attention to Section 76(a) of the Act and argued that in view of the said provision the Arbitration Award is to be treated as a decree of the civil court and shall be executed in the same manner as decree of such court. The counsel argued that since the Arbitration Award is deemed to be a Decree of the Civil Court, the Code of Civil Procedure is applicable to the execution

proceedings for executing Arbitration Award passed under Section 69 of the Act.

16. I am unable to accept the said contention. Section 76 deals with the execution of the Orders, decisions and awards passed under the Act. It provides three modes of execution. The first mode provided in Sub-Clause (a) is execution through civil court on a Certificate issued by the Registrar. The second mode provided in Sub-Clause (b) is recovery of money in accordance with the law for the recovery of arrears of public revenue due on land where the order is for recovery of money. It indicates recovery proceedings under the Kerala Revenue Recovery Act, 1968 and the Rules made thereunder. The third mode of execution provided in Sub-Clause (c) is execution by the Registrar either by himself or through his subordinate officers. All these three modes of execution are distinct and independent. The Code of Civil Procedure is applicable only to the Civil Court executing the decree on the basis of a Certificate issued by the Registrar under Sub-Clause (a). In the other two modes of execution provided in Sub-Clauses (b) and (c), the Award is not deemed to be the decree of the Civil Court and as such Code of Civil Procedure is not applicable. In the case on hand, the

execution is made through the mode provided in Sub-Clause (c) to which the Code of Civil Procedure is not made applicable.

17. It is true that the Registrar is deemed to be a civil court in Section 77 of the Act. But on going through the said provision the Registrar is deemed to be a civil court only for the purpose of Article 136 of Schedule to the Limitation Act, 1963 and not for any other purpose. There are other indications in the Act to hold that Code of Civil Procedure is not applicable to the arbitration proceedings under the Act and its execution. As per Section 70(3) the Co-Operative Arbitration Court is given the same powers as vested in the civil court under Code of Civil Procedure with respect to the limited matters which are stated therein. As per Rule 122 of the Rules coming under Chapter XII under the head 'Appeals, Revision and Review' provisions of Code of Civil Procedure and the Civil Rules of Practice are made applicable with respect to the limited matters which are stated therein. The Rule 122 coming under Chapter XII applies only to the Kerala Co-Operative Tribunal and not to any other proceedings. There are specific provisions for execution in Chapter XI of the Act and Chapter XI of the Kerala Co-operative Societies Rules. If the Code of Civil Procedure is applicable to

the execution proceedings under the Act and Rules, there is no need to include specific provisions for execution proceedings in Chapter XI of the Act and Chapter XI of the Rules.

18. In **Kuriako v. Baby [1998 (1) KLT 157]** the learned Single Judge of this Court has held that Code of Civil Procedure as such is not applicable for execution of Awards when Assistant Registrars are executing the orders.
19. As Rightly pointed out by the Learned Counsel for the 1<sup>st</sup> respondent, in view of Order XXII Rule 12, the Rules of the Code of Civil Procedure regarding abatement are not applicable to execution of a decree or order. In **Sabeeda Beevi v. Nazeema Thaha & Ors [ 2012(3) KLT 747 ]** referring to Order 22 Rule 12 of the Code of Civil Procedure, the Learned Single Judge of this Court has held that there would not be any abatement to execution proceedings due to non-impleadment of legal representatives and that legal representatives can be impleaded at any time and execution proceedings can be proceeded with. So even the provisions of the Code of Civil Procedure is of any help to the petitioners, even if the same are made applicable.
20. Hence the contention of the counsel for the petitioner that the

Code of Civil Procedure is applicable to the execution proceedings of the Arbitration Award passed under the Act is unsustainable.

21. Issue No.2: Rule 74 provides for the execution of the Award under Section 76 (c). Rule 74(4) provides that where a defaulter dies before the decree has been fully satisfied an Application under Rule 74(1) may be made against the legal representatives of the deceased and thereupon all provisions of the said Rule shall apply as if such legal representatives were the defaulters. Though on a strict interpretation of Rule 74(4), a fresh Application is to be made under Rule 74(1) against the legal representatives of the deceased judgment debtor, no prejudice would be caused to the legal representatives of the judgment- debtor if they are impleaded in the existing Application filed under Rule 74(1) the Decree holder. On the other hand, serious prejudice would be caused to the Decree Holder if, in every case of death of judgment debtor/s, the Decree Holder is asked to file fresh Application for execution leaving the stage at which the existing application has reached. Hence I hold that in the case of the death of judgment debtor,

the Decree holder can file an Application under Rule 74(4) of the Rules for impleading the legal representative/s in an existing Application for execution filed under Rule 74(1) of the Rules.

22. Rules 104 to 106 of the Rules deal with death of parties and abatement with respect to the proceedings before the Kerala Co-Operative Tribunal. As per Rule 104, the impleading of legal representatives of the deceased is to be made within 90 days and in case of default the proceedings will be abated. As per Rule 106, an application for setting aside the abatement can be made within a period of sixty days from the date of abatement and the provisions of Section 5 of the Limitation Act, 1963 is made applicable. Whereas there is specific Rule 74(4) for impleading the legal representatives in execution proceeds of the Arbitration Award without any provision for a limitation period and abatement. No provision is made for limitation period and abatement in Rule 74(4) as the Legislature wanted it to be similar to the provisions in the Code of Civil Procedure.
23. Learned Counsel for the petitioner submitted that in view of the decision in **Kuriako's case** (supra) it is well settled that execution proceedings would abate without impleadment of legal representatives as required under Rule 74(4) of the Rules.

On perusal of the said decision, the sale in execution of an Arbitration Award under the Act was set aside by the Learned Single Judge of this Court finding that the legal representatives of the deceased are not made parties before the sale in the execution proceedings. The said decision is clearly distinguishable on the facts of the present case. Here sale has not taken place and the execution petition is still pending consideration. The said decision does not speak anything about abatement. Hence, I hold that there is no abatement in case the legal representatives of the deceased judgment-debtor are not impleaded in the execution proceedings to execute the Arbitration Award passed under the Act and that there is no impediment to implead the legal representatives in the execution proceedings at any time irrespective of the date of death of the deceased judgment debtor.

24. In the case on hand the 1<sup>st</sup> respondent Bank is free to proceed with the execution impleading the legal representatives of the deceased judgment debtor Sri. Velayudhan.N.P at any time
25. In view of the aforesaid propositions law, I dismiss W.P.© No.27416/2021 and dispose of W.P.(C)No.28342/2021 directing the first respondent Bank to proceed with the execution

proceedings pursuant to Ext.P2 Award only after impleading the legal representatives of the deceased judgment debtor Sri. Velayudhan M.P. The parties are at liberty to raise all other contentions in the execution proceedings.

**Sd/-**

**M.A.ABDUL HAKHIM  
JUDGE**

Shgx



APPENDIX OF WP(C) 27416/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE APPLICATION FOR LOAN DATED 10.06.2008 SUBMITTED BY LATE VELAYUDHAN.N.P.
- EXHIBIT P2 TRUE COPY OF BOND (LOAN NO.OL NO.26412) DATED 14.07.2008 EXECUTED BY LATE VELAYUDHAN.N.P. IN FAVOR OF THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE GEHAN DATED 02.07.2008 EXECUTED BY LATE VELAYUDHAN N.P.BEFORE THE PETITIONER
- EXHIBIT P4 TRUE COPY OF THE DOCUMENT NO. 993/1956 OF SUB REGISTRY, ALUVA.
- EXHIBIT P5 TRUE COPY OF AWARD DATED 28.11.2011 IN ARC NO.3087/11 PASSED BY THE ARBITRATOR.
- EXHIBIT P6 TRUE COPY OF NOTICE DATED 4TH OF MAY 2012 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P7 TRUE COPY OF LAWYER NOTICE DATED 01.10.2021 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE ACKNOWLEDGMENT CARD SHOWING RECEIPT OF EXT.P7 BY THE 5TH RESPONDENT
- EXHIBIT P9 TRUE COPY OF REPRESENTATION DATED 11-11-2021 SENT TO THE 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P10 TRUE COPY OF POSTAL RECEIPT SHOWING DISPATCH OF EXT.P9 ON 11-11-2021.
- EXHIBIT P11 TRUE COPY OF ACKNOWLEDGEMENT CARD SHOWING THE RECEIPT OF EXHIBIT.P9 ON 12-11-2021.

APPENDIX OF WP(C) 28342/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE LAWYER NOTICE DT. 01/10/2021.
- EXHIBIT P2 TRUE COPY OF THE AWARD IN ARC 3087 OF 2011 DT. 28/11/2011 PASSED BY THE ARBITRATOR ATTACHED TO OFFICE OF 2ND RESPONDENT.
- EXHIBIT P3 PHOTOGRAPH OF THE RESIDENTIAL BUILDING WHERE THE PETITIONERS RESIDE.

RESPONDENT EXHIBITS

- EXHIBIT R1 (A) TRUE COPY OF THE APPLICATION FOR LOAN DATED 10.06.2008 SUBMITTED BY LATE VELAYUDHAN N.P.
- EXHIBIT R1 ( B) TRUE COPY OF BOND(LOAN NO. OL NO. 26412) DATED 14.07.2008 EXECUTED BY LATE VELAYUDHAN N.P. IN FAVOUR OF PETITIONER
- EXHIBIT R1 (C) TRUE COPY OF GETHAN DATED 02.07.2008 EXECUTED BY LATE VELAYUDHANN.P. BEFORE THE PETITIONER
- EXHIBIT R1 (D) TRUE COPY OF DOCUMENT NO. 993/1956 OF SUB REGISTRY, ALUVA.
- EXHIBIT R1 (E) TRUE COPY OF AWARD DATED 28.11.2011 IN ARC 3087/2011 PASSED BY THE ARBITRATOR.
- EXHIBIT R1 (F) TRUE COPY OF EA.A. NO. 208 OF 2012 FILED BEFORE THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,ALUVA.
- EXHIBIT R1 (G) TRUE COPY OF DEMAND NOTICE DATED NOTICE DATED 04.05.2012 IN EA NO. 208 OF 2012 ISSUED BY THE SALE OFFICER.
- EXHIBIT R1 (H) TRUE COPY OF REPRESENTATION DATED 24.02.2016 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT R1 (I) TRUE COPY OF INTIMATION SENT BY THE 1ST RESPONDENT TO THE 1ST PETITIONER SENT 14.05.2016
- EXHIBIT R1 (J) TRUE COPY OF THE ACKNOWLEDGMENT CARD OF EXT. R1 (I)
- EXHIBIT R1 (K) TRUE COPY OF THE LOAN DETILS SENT TO THE 1ST PETITIONER ALONG WITH THE COVERING LETTER SENT TO THE 1ST PETITIONER ON 09.06.2016
- EXHIBIT R1 (L) TRUE COPY OF THE LETTER DATED 20.07.2016 SENT BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT R1 (M) TRUE COPY OF PETITION DATED 05.04.2022 FILED BEFORE THE 2ND RESPONDENT.

W.P.(C)NOS.27416 & 28342 of 2021

19

EXHIBIT R1 (N)

TRUE COPY OF THE POSTAL RECEIPT OF EXT. R1 (M)  
SENT ON 05.04.2022

EXHIBIT R1 (O)

TRUE COPY OF THE POSTAL RECEIPT OF EXT. R1 (M)