

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 15TH DAY OF JULY 2022 / 24TH ASHADHA, 1944

OP(C) NO. 1154 OF 2022

CHEQUE APPLICATION NO.5/2022 IN LAR 2/1999 OF SUB COURT,

THIRUVALLA

PETITIONER/DECREE HOLDER:

M.BABURAJ,
AGED 59 YEARS, S/O.LATE T.V.LEELAMMA,
ELAPPUNKAL HOUSE, PULLAD P.O AND MURI, KOIPPURAM
VILLAGE, THIRUVALLA TALUK, PATHANAMTHITTA
DISTRICT., PIN - 689548.

BY ADV V.SETHUNATH

RESPONDENT/JUDGMENT DEBTOR:

STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA, PIN - 689645.

SENIOR GOVERNMENT PLEADER SRI DENNY DEVASSY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01.07.2022,
THE COURT ON 15.07.2022 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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O.P(C).No.1154 of 2022

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Dated this the 15th day of July, 2022

J U D G M E N T

This is an Original Petition filed under Article 227 of the Constitution of India by the peitioner herein, who is the son of the original claimant Smt.T.V.Leelamma in LAR.No.2/1999 on the file of Sub Court, Thiruvalla. The respondent herein is the State of Kerala, who is the judgment debtor in the above LAR.

2. The questions arise for determination are as under:

(i) Production of succession certificate as mandated under Section 214(1)(b) of the Indian Succession Act by the legal-heirs of the decree holder, when becomes mandatory?

(ii) When legal-heirs of the deceased decree holder need not produce succession certificate in cases involving `debt' as contemplated under Section 214(1)(b) of the Succession Act?

(iii) Is it mandatory to produce succession certificate by the legal-heirs to proceed with execution proceedings in Land Acquisition cases to realise the compensation amount?

(iv) Is it mandatory to produce succession certificate by the legal-heirs to proceed with execution proceedings in motor accident claim cases and in cases involving grant of compensation under the Electricity Act to realise the compensation amount?

(v) Is it permissible for the surviving decree holder to proceed with execution proceedings involving 'debt' as contemplated under Section 214(1)(b) of the Indian Succession Act on his behalf and on behalf of the legal-heirs/legal representatives of the deceased decree holder?

3. Heard the learned counsel for the petitioner Advocate V. Sethunath and the learned Government Pleader Sri Denny Devassy.

4. The prayers in the Original Petition are as under:

“1. Issue a direction to the Sub Court, Thiruvalla to release the payment to the petitioner in Cheque application No.5/2022 in L.A.R.No.2/1999;

2. Issue a direction to the Sub Court, Thiruvalla not to insist for production of Legal heir certificate or Succession Certificate

3. *Grant such other relief as this Hon'ble court deems fit and proper to grant in the facts and circumstances of the case."*

5. The crux of the matter is that when appeal against the award passed by the Sub Court, Thiruvalla was considered by the Apex Court, enhanced compensation was granted as per Ext.P1 judgment in Civil Appeal Nos.8332-8334 of 2009 dated 19.11.2015. Accordingly, the respondent/judgment debtor deposited Rs.8,20,486/- on 17.02.2022 and the claimant died on 19.07.2021 before deposit. Copy of the death certificate is produced as Ext.P2. The husband of the original claimant died on 20.03.2001 and the claimant is survived by 3 daughters and one son. The petitioner is the son. Usha Vamadevan Thampi, Sheela Jagadeesh and Sheena Ajayan are the sisters of the petitioner. Family membership certificate in this regard is produced before this Court as Ext.P3. As per Ext.P4, the sisters above named had executed a special power of attorney on 1.6.2022 in favour of the petitioner authorising him to receive the money.

6. Accordingly, Ext.P6 cheque application was filed by the

petitioner before the Sub Court, Thiruvalla.

7. The petitioner would allege that the Sub Judge is insisting for production of succession certificate to disburse the amount. Though argument notes as Ext.P7 was produced before the Sub Judge, no order has been passed in Ext.P6 application.

8. It is submitted by the learned counsel for the petitioner that the reference under Section 18 of the Land Acquisition Act is not a proceeding for recovery of a 'debt'. Therefore, for executing the award or to receive money in execution proceedings by the heirs of the deceased/deed holder, the production of succession certificate is not necessary. Decision reported in [1998 KHC 481 : 1998 (2) KLT 912 : 1998 (2) KLJ 720 : ILR 1999 (2) Ker. 60 : AIR 1999 Ker. 56], ***Resilikutty Chacko v. State of Kerala***, has been given emphasis in this regard.

9. In ***Resilikutty Chacko v. State of Kerala***'s case (*supra*), this Court considered a case where the revision petitioners in the above case one Chacko, who was the claimant in L.A.R Nos.115 and 116 of 1982, died on 25.08.1997, during pendency of execution

petition. When the revision petitioners, who are the legal heirs of Chacko, filed application to implead themselves in the execution petition, the execution court dismissed the same for non production of succession certificate and the legality of the said order was considered. While setting aside the order of the execution court insisting for production of succession certificate, this Court held that the petitioners being legal representatives of the deceased decree holder, this amount can be given to the present petitioners without succession certificate. It was observed by the learned Single Judge that the question as to whether compensation under the Land Acquisition Act is a debt or not, did not come up for consideration in an earlier decision reported in [1979 KLT 401 : 1979 KHC 133 : 1979 KLT SN 60 : AIR 1979 Ker. 231 : 1979 KLN SN 27], *Ramakrishnan Nair v. Easwari Amma*.

10. In order to decide the questions involved, it is necessary to refer to the provisions contained in S.214(1)(a) and (b) of the Indian Succession Act, which reads as follows:

214. *Proof of representative title a condition precedent to*

recovery through the Courts of debts from debtors of deceased persons:-- (1) No Court shall-- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of--

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under S.31 or S.32 of the Administrator General's Act, 1913 (3 of 1913) and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889 (7 of 1889)

or

(v) a certificate granted under Bombay Regulation No.VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes."

11. In the decision reported in [2008 (1) KHC 615 : 2008 (1) KHC 615 : 2008 (1) KLT 904], ***Elsy & Ors. v. State of Kerala & anr.***, a Division Bench of this Court considered correctness of

the decision in ***Ramakrishnan Nair v. Easwari Amma***'s case (*supra*), and after analysing various decisions on the point the Division Bench held that the view taken by the Travancore Cochin High Court and the learned Single Judge of this Court in ***Ramakrishnan Nair v. Easwari Amma***'s case (*supra*) is to be accepted as the correct view. Para.20 and 21 of ***Elsy & Ors. v. State of Kerala & anr.***'s case (*supra*) are extracted hereunder:

*“20. We have considered the divergent views expressed by the Courts while interpreting the provisions contained in S.214(1)(b) of the Indian Succession Act. To us it appears the view taken by the Travancore Cochin High Court and by the learned Single Judge of this Court in **Ramakrishnan Nair v. Easwari Amma**, [1979 KHC 133 : 1979 KLT 401 : 1979 KLT SN 60 : AIR 1979 Ker. 231 : 1979 KLN SN 27] is to be accepted as the correct view for the following reasons : S.214 is a mandatory provision. It is not correct to say that restrictions does not apply except in cases of substantive application. Mere filing of an execution petition will not empower the Court to proceed further with the application, since the restriction is “not to proceed with the application”. The word “to proceed with” is to be understood as including continuing with the proceedings. However, it is not condition precedent to file a certificate as prescribed thereunder along with the application for impleadment, but it is sufficient if it is filed/produced later before proceedings are taken. In other words, Court shall not dismiss the application in limine; but grant time for compliance with the provisions and to produce the certificate as required therein. But in the present case, the position is different. We hold that this is the correct view.*”

21. *As we have already indicated, clause (b) of sub-section (1) of S.214 merely debars the Court to proceed with an application for execution of a decree or order against the debtor of a deceased person. The expression “order” appearing in clause (b) is one already passed which is sought to be executed by the legal representatives. Thus it only debars the execution of the order and not disbursement of the amount lying in deposit in Court and it cannot in any way said to be an application for execution of decree or order. Thus for withdrawing the amount already deposited by the judgment debtor, no such certificate is required to be produced, as S.214(1)(b) only imposes restriction to proceed with the execution. Being a provision restricting the power of the Court, it cannot be interpret in such a manner to impose further restrictions than what is contemplated by the provisions. Since in the present case, the decree holder himself having filed the execution application, the judgment debtor, without a demur, having deposited the entire amount and since the respondent did not file any objection to Exts.P1 and P2 applications or filed any objection as against the same, the Court below ought not have hold that the restriction contained in S.214(1)(b) would apply to this case.”*

Thus law is clear on the point that in order to proceed with a pending execution or to file a fresh execution petition to realise a decree `debt', production of succession certificate as mandated under Section 214 (1)(b) of the Succession Act is mandatory. But the ratio in *Elsy & Ors. v. State of Kerala & anr.*'s case (*supra*) is that after deposit of the entire decree debt by the judgment debtors before the execution court, if the decree holder dies, the legal-heirs of the decree holder need not produce succession certificate.

12. In *Resilikutty Chacko v. State of Kerala's* case (*supra*), the learned Single Judge of this Court distinguished the decision in *Ramakrishnan Nair v. Easwari Amma's* case (*supra*) on the finding that in the said case 'debt' as contemplated under Section 214(1)(b) of the Succession Act was considered and the same did not include compensation.

13. In this connection it is relevant to refer a judgment of the Apex Court reported in [2000 KHC 512 : 2000 (2) KLT SN 38 : 2000 (9) SCC 240], *Rukhsana v. Nazrunnisa*. In the said case also, the Apex Court dealt with award of compensation in respect of a person, who was employed in Kuwait, consequent on his death. In the said decision, the Apex Court held that succession certificate as envisaged in the Indian Succession Act can be granted only in respect of 'debts' or 'securities' to which a deceased was entitled. But the amount involved in the said case was not a 'debt' or 'security', to which the deceased was entitled but the amount was sanctioned as compensation on account of the death of the deceased. In such cases, the civil court would only to decide as to

whether who are legal representatives and what shares they are entitled to as per the personal law applicable to them.

14. It is interesting to note that in the decision reported in [2003 KHC 3668 : AIR 2003 Kar. 142], ***Sangappa Mallappa Kuri v. Special Land Acquisition Officer, Bagalkot***, a learned Single Judge of Karnataka High Court held that production of succession certificate is a must to proceed with execution of the decree in Land Acquisition Proceedings, after referring a Division Bench ruling of the High Court of Karnataka, [ILR 1999 Kant 4411], ***Mallappa, since deceased by his Lrs. v. Assistant Commissioner and Land Acquisition Officer*** in relation to compensation granted under the Land Acquisition Act. But the said decision runs contra to the ratio in ***Rukhsana v. Nazrunnisa's*** case (*supra*) referred above by the Apex Court.

15. In a decision reported in [2014 KHC 5801 : 2014 ACJ 2501], ***Sabnam & Ors. v. United India Insurance Co. Ltd.***, a learned Single Judge of the Rajasthan High Court considered the necessity of succession certificate while claiming compensation by

the legal representatives of the deceased in motor accident cases and it was held that succession certificate could be granted only in respect of 'debts' and 'securities' and the compensation amount under the Motor Vehicles Act did not come under 'debts' or 'securities'.

16. Thus the law emerges is that production of succession certificate is mandatory as per Section 214(1)(b) of the Succession Act when the decree holder dies in cases where the decree amount comes under the category 'debts' or 'securities'. Therein also, there is an exception that when the decree holder dies after deposit of the amount before the court, production of succession certificate is not necessary to withdraw the amount by the legal representatives.

17. Similarly, compensation arising out of motor accident or compensation arising out of land acquisition proceedings or cases involving grant of compensation under the Electricity Act, etc. would not come under the purview of 'debts' or 'securities'. Therefore, in such cases production of succession certificate is not

mandatory and the legal representatives or legal heirs, as the case may be, have to convince their status before the court concerned otherwise to realise the compensation.

18. Similarly, when one of the decree holders dies, involving 'debt' as contemplated under Section 214(1)(b) of the Succession Act, the surviving decree holder can execute decree on his own behalf and on behalf of the legal representative of the deceased decree holder and in such case, succession certificate as per Section 214(1)(b) of the Succession Act is not necessary. Decision of this Court reported in [1981 KHC 430 : AIR 1981 Ker. 51 : 1980 KLN SN 58], *M.C.Sreedharan v. Pattieri Kumaran*, is on this point.

19. In view of the above legal position, the petitioner herein shall not produce succession certificate for releasing the amount deposited in L.A.R.No.2/99 on the file of Sub Court, Thiruvalla since the said amount is compensation outside the purview of the definition of 'debts' and 'securities'.

In view of the matter, I direct the Sub Court, Thiruvalla, to

consider cheque application No.5/2022 in LAR.No.2/1999 and dispose of the same without insisting for production of succession certificate and on considering the case put up by the petitioner on merits.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtv/

APPENDIX OF OP(C) 1154/2022

PETITIONER'S EXHIBITS

- ExhibitP1 TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO. 8332-8334 OF 2009 ON THE FILE OF THE HON: SUPREME COURT DATED 19-11-2015.
- ExhibitP2 THE TRUE COPY OF THE DEATH CERTIFICATE DATED 9-8-2021.
- ExhibitP3 THE TRUE COPY OF THE FAMILY MEMBERSHIP CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KOIPPURAM DATED 19-1-2022.
- ExhibitP4 TRUE COPY OF THE SPECIAL POWER OF ATTORNEY EXECUTED BY THE SISTERS OF THE PETITIONER DATED 1-6-2022.
- ExhibitP5 TRUE COPY OF THE NOTARISED AFFIDAVIT EXECUTED BY THE PETITIONER DATED 24-01-2022.
- ExhibitP6 THE TRUE COPY OF THE CHEQUE APPLICATION FILED BY THE PETITIONER BEFORE THE SUB COURT , THIRUVALLA DATED 2-6-2022.
- ExhibitP7 THE TRUE COPY OF THE ARGUMENT NOTES FILED BY THE PETITIONER'S COUNSEL BEFORE THE SUB COURT, THIRUVALLA DATED 22-06-2022.