

C.R

K.BABU, J.

W.P.(C)No.23555 of 2024

Dated 30th March, 2026

ORDER

The petitioner challenges a requisition notice dated 31.5.2024 (Ext.P6) issued by respondent No.4 Co-operative Society to the Tahsildar (respondent No.1) for the recovery of loan dues by deducting them from the Death-Cum-Retirement-Gratuity (DCRG) amount as well as pension amount of the petitioner. Ext.P6 notice is stated to be issued under Section 37 of the Kerala Co-operative Societies Act, 1969 (for short 'the Act') read with Rule 52 of the Co-operative Societies Rules, 1969 (for short 'the Rules').

Brief facts of the case

2. The petitioner was working as an Upper Division Clerk in the Revenue Department. He had stood as a surety for respondent No.5 for the purpose of availing a loan of Rs.1,50,000/- from respondent No.4-Co-operative Society. In the loan agreement, the petitioner as guarantor had agreed in favour of the Society providing that his employer and pension sanctioning authority shall be competent to deduct the amount from his salary, eligible gratuity and pension

benefits. Respondent No.5 later committed default in repaying the loan amount. Consequently, respondent No.4-society filed ARC No.264 of 2022 before respondent No.3/the Assistant Registrar of Co-operative Societies. Respondent No.3 passed Ext.P4 award on 30.03.2022. The petitioner retired on 31.05.2024. On the date of retirement, Ext.P6 requisition notice was issued directing respondent No.1-Tahsildar to recover the amount due as per the loan by deducting it from the DCRG and pension amount of the petitioner.

3. The contention of respondent No.4-society is that as the petitioner had consented in writing for the recovery of the amount due to respondent No.4-society from his eligible gratuity, Ext.P6 notice is lawful. The question that arises for consideration is whether a Co-operative Society is entitled to recover the amount due to it from a retired Government employee from his DCRG amount as well as pension amount in spite of the bar for such recovery under Rule 124 of the Kerala Service Rules, 1959 Part III and Sections 60(1) and 60(1A) of the Code of Civil Procedure (CPC), if the petitioner had executed an agreement consenting to deduct amounts from his DCRG or pension.

4. This Court had appointed Adv.K.M.Firoz as Amicus

Curiae.

5. I have heard the learned counsel for the petitioner, the learned counsel for respondent No.4-society and the learned Government Pleader.

6. The learned counsel for the petitioner submitted that as respondent No.4-society has not taken any steps to recover the amount due from the principal borrower, they cannot proceed against the petitioner.

7. The learned counsel for respondent No.4 submitted that, as there was express consent on the part of the petitioner at the time of availing the loan, the Co-operative Society is entitled to recover the amount due to it from his eligible gratuity. It is submitted that Ext.P6 notice is lawful. The learned counsel for respondent No.4 submitted that Section 37 of the Act and the relevant provisions in the Kerala Service Rules permit the Co-operative society to get the amount due to it deducted from the DCRG of the petitioner.

8. The learned Government Pleader, relying on Ruling No.1 under Rule 3 of Part III of Kerala Service Rules, contended that Ruling No.1 contemplates granting of written consent by the Government

employee to Co-operative societies to recover dues from the DCRG payable to him and that when consent is given by the Government employee to the Co-operative society, he cannot later contend that he is protected from recovering the amount due from the DCRG.

9. The learned Amicus Curiae has taken me to Section 37 of the Co-operative Societies Act, Rule 52 of the Co-operative Societies Rules, Rule 124 of the Kerala Service Rules, Ruling No.1 under Rule 3 of Part III KSR, Section 60 of the Code of Civil Procedure and the Pensions' Act, 1871. The learned Amicus Curiae also brought to my notice the decision rendered by a Division Bench of this Court in **Surendran v. Mavelikara Primary Coop. Agri. and R.D. Bank Ltd. (2005 KHC 1796=2005 (4) KLT 619)**, and the decisions rendered by Single Benches of this Court in **Kuttan Pillai v. State of Kerala (2001 KHC 417= 2001 (2) KLT 375)** and **Adhyapaka Urban Co-operative Bank Ltd. No.794 and Another v. State of Kerala and Others (2022 (6) KHC 388 = 2022 (5) KLT 854)**, dealing with the relevant provisions. The learned Amicus Curiae, relying on Section

60(1A) of CPC and the decision of the Supreme Court in **Radhey Shyam Gupta v. Punjab National Bank and Another (2009 KHC 4050 = AIR 2009 SC 930)**, submitted that exemptions under Section 60 of CPC embody a public policy based on a welfare legislative objective. The learned Amicus Curiae submitted that consent cannot override public policy and such a consent overriding public policy will be void under Section 23 of the Contract Act. The learned Amicus Curiae submitted that recovery of DCRG without just procedure violates Articles 14, 21 and 300A of the Constitution of India. The learned Amicus Curiae submitted that interpretation of the provisions on the basis of the theory of public policy is highly required. The learned Amicus Curiae relied on Section 13 of the Payment of Gratuity Act, 1972, in support of his contentions.

10. The impugned notice (Ext.P6) is stated to be issued under Section 37 of the Act. It is profitable to extract Section 37 of the Act and Rule 52(1) of the Rules. Section 37 reads thus:-

“Section 37 - Deduction from salary to meet society's claim in certain cases.- (1) Notwithstanding anything contained in any law for the time being in force, a member of a society, may execute an agreement in favour of the

society providing that his employer or the officer disbursing his salary or wages shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debts or other demand owing by the member to the Society.

(2) On the execution of such an agreement the employer or the officer disbursing the salary or wages of any such member as is referred to in sub-section (1) shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction.

Provided that this sub-section shall not apply if the employees, whose salary is to be deducted, are not informed at least thirty days in advance, by notice duly acknowledged, about the dues on loan or award amount."

11. Rule 52(1) of the Rules reads thus:-

52. Deduction from salary or wages.--(1) On the execution of an agreement under sub-section (1) of section 37, the society may send intimation by registered post/local delivery of the execution of the agreement to the employer or the officer disbursing the salary or wages of the member who has executed the agreement and furnish the said employer or officer with a copy of such agreement certified in the manner specified in Rule 32. The employer or the officer disbursing the salary or wages shall on receipt of such intimation from the society make a note of the agreement in the register maintained by him for the disbursement of salary or wages."

12. Section 37 of the Act begins with a non-obstante clause.

As per Section 37 of the Act, a member of a society may execute an agreement in favour of the society providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society. Section 37 makes it clear that the provision applies only to salary or wages. Recovery from the gratuity or pension payable to the employee is not within the scope of Section 37 of the Act. The question whether the expression "salary" used in Section 37 of the Act will include DCRG came up before the Division Bench of this Court in **Surendran** (supra). In **Surendran** this Court held thus:-

22. From the discussion made above, it is abundantly clear that when the language of the statute is clear and plain and it shows that the term "salary" used in the relevant provision refers to periodical and monthly recurring payment to be made to the employee while in service, it will not be permissible for the court to insert, interpolate or substitute any word or expression such as "DCRG" into the provisions, to expand the meaning of the term "salary". However noble and lofty the court's intention may be, such interpolations will amount to precedential legislation, which is not permitted by law. Courts can only interpret law consistent with the language of the statute, without adding

to or deleting any expression from the statute. The court cannot broach its own intention onto the statute which the court thinks is right, but which the legislature did not intend, going by the plain language. In the above circumstances, we hold that the expression "salary" used in S.37 of the Act will not include "DCRG".

In **Surendran** this Court categorically held that the expression "salary" used in Section 37 of the Act will not include DCRG.

13. It is relevant to consider Rule 124 of Part III KSR, which reads thus:-

"124. Liability for attachment.- No pension granted or continued by Government on political considerations or on account of the past service or present infirmities or as a compassionate allowance and no money due, or to become due, on account of any such pension for allowance shall be liable to seizure, attachment or sequestration by process of any Court in India at the instance of a creditor for any demands against the pensioner, or in satisfaction of a decree or order of any such Court."

As per Rule 124, no pension shall be liable to seizure, attachment or sequestration at the instance of a creditor for any demands against the pensioner, or in satisfaction of a decree or order. However, Ruling No.1 under Rule 3 of Part III KSR contemplates granting of written consent by the Government employee to Co-operative societies to recover dues from DCRG payable to him. Ruling No.1 is extracted below:-

"Amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-retirement-gratuity payable to him with his consent in writing."

While considering the impact of Ruling No.1, the Division Bench in

Surenderan held thus:-

"24 Ruling 1 under R.3 Part III, KSR also shows that the dues from a Government employee or pensioner to Cooperative Societies, even though such dues are not treated as Government dues, can be recovered from death cum retirement gratuity payable to him under certain circumstances. But such recovery can be made only with the consent of the employee concerned, in writing. Thus it is evident from a plain reading of the above provisions that the amount which is due to the cooperative society from a government employee cannot be recovered from DCRG under Note 1 to R.3 of Part III of KSR, unless the government employee consents to such recovery in writing."

14. In **Kuttan Pillai** (supra), considering the argument that agreement for deduction of any amount from DCRG is void as per the provision contained in Section 60 of CPC, this Court held thus:-

"3. Gratuity is payable to the petitioner on the basis of Rules contained in R.3, Part III of the Kerala Service Rules. R.3 thereof makes it clear that the amount due from retired employees towards Government Companies can be deducted from the Gratuity if they consent for it and only the balance amount need be paid to the incumbent. When this provision contained in the rules give right for payment of gratuity after deducting the amount due to the Government companies,

after having agreed or consented in that line, the petitioner cannot now turn round and say that Annexure I is void. It is based on that statutory provisions contained in R.3 Part III of the K. S. R., amount due from the petitioner to the Government Company namely, the Kerala Financial Corporation, is sought to be recovered. Therefore, petitioner will be entitled to get only the balance, if any left, after deducting the amount made mention of by himself in Annexure A1."

15. In **Adhyapaka Urban Co-operative Bank Ltd. No.794** (supra), this Court considered the impact of Rule 2 of Part III KSR while considering the challenge to a Government order which mandated that notwithstanding statutory consent obtained by the societies from its members at the time when loans were availed by the latter to the effect that his employer or the officer disbursing his salary or wages shall be competent to deduct from salary or retiral benefits payable to him by the employer, recovery cannot be affected against his retiral benefits, unless the said person gives another consent for such purposes, at the time of retirement, to his Drawing and Disbursing Officer. This Court concluded thus:-

"10. This is because, as far as Government employees who have given a statutory consent - under S.37 of the "KCS Act", to the Society from which they had availed loans - to the unequivocal effect that the same can be recovered both from their salary and retiral benefits, they can certainly not impel

anex post facto contention that, since they had not offered a further and additional consent for recovery from their DCRG at the time of their retirement, under the purlieu of R.2 Part III KSR, no such is permissible, since the aforementioned earlier consent is statutory in one part - to the extent of recovery from salary is concerned; and contractual in the other part - *qua* recovery from retiral benefits.

11. In the afore circumstances, I am certain that this Court will be justified in reading down Ext.P4 as far as recovery by Co - operative Societies towards loans disbursed by them is concerned; thus declaring that the prescriptions therein will apply only to a person who had not given any contractual consent to the Society to recover the loan availed of by him/her from the retiral benefits, either along with or subsequent to the statutory consent offered by him/her as regards recovery from salary under S.37 of the KCS Act."

16. In the given case, the petitioner had given express consent in writing as per Exhibit P2 loan agreement. Relying on Ruling No.1 under Rule 3, Part III of the Kerala Service Rules, learned counsel for the Society contended that waiver of a benefit or contracting out by the person for whose benefit the same has been granted is permissible. It is submitted that the DCRG payable to the petitioner is, therefore, liable to be recovered based on the consent given.

17. Proviso (g) to Section 60 of the CPC mandates that stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer is not liable to attachment and

recovery. In **Radhey Shyam Gupta** (supra), the Supreme Court held that the gratuity payable would not be liable to attachment in view of proviso (g) to Section 60(1) of the CPC. It is highly relevant to consider Section 60(1A) of the CPC, which was inserted by Act No.104 of 1976. Section 60(1A) reads thus:-

“60. Property liable to attachment and sale in execution of decree:

xxx xxx xxx

(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.”

18. By way of Section 60(1A) of the CPC, the legislature aims to ensure that the retired employees have a means of livelihood and are not left destitute. Section 60(1A) of the CPC has to be interpreted broadly to protect gratuity from various forms of recovery and attachment. DCRG is the last financial safety net of a retired Government servant, earned through his entire working life. Exemptions under Section 60 of the CPC are not merely procedural privileges of the judgment debtor. They contemplate a public policy

based on a welfare legislative objective.

19. Consent cannot override public policy and such a consent overriding public policy will be void under Section 23 of the Contract Act. If so, a person cannot contract out or consent for the deprivation of property that the law protects from creditors. If exemption of gratuity under Section 60 of the CPC can be nullified by routing recovery through a non-judicial mechanism, the protection will become illusory. Constructing Section 60 of the CPC by applying the rule of purposive construction, protection provided therein is to be extended to all forms of coercive recovery and not just applicable to the proceedings in execution under the CPC. The recovery of DCRG without just procedure violates Articles 14, 21 and 300A of the Constitution of India. Therefore, written consent cannot validly authorise recovery from DCRG in a manner that strips the employee of the statutory and constitutional protection that the law has specifically designed to preserve a terminal benefits from creditor's reach, regardless of the mechanism of recovery.

20. A purposive interpretation will lead to the conclusion that consent to recover DCRG given under Ruling No.1 under Rule 3 Part III of the Kerala Service Rules is void as being contrary to the legislative policy embedded in Sections 60(1) and 60(1A) of the CPC. This interpretation is also supported by the legislative policy of the Pensions' Act, 1871, by which the pension granted by the Government on account of past services, shall not be liable to seizure, attachment or sequestration at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order.

21. Section 11 of the Pensions' Act, 1871, reads as follows:

“11. Exemption of pension from attachment.—No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

This section applies also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma.”

22. Section 12 of the Pensions' Act, 1871 declares that all agreements made by a person entitled to any pension mentioned in Section 11 in respect of any money not payable on account of any such pension are null and void. However Sections 11 and 12 of the Pensions' Act are not applicable to the instant case since as per Section 1 of Pensions' Act, the said Act is made applicable to the whole of India only in respect of Union Pensions as held in **Abdul Sathar v. Pathimuthu and Others [2020 (1) KHC 766]**. It is also relevant to refer to Section 13 of the Payment of Gratuity Act, 1972, which demonstrates a similar policy even though the said provision is not applicable to the subject matter DCRG.

23. In view of the above discussion, the correctness of the law laid down by the Division Bench of this Court in **Surendran v. Mavelikara Primary Cooperative Agricultural and R.D. Bank Ltd. [2005 (4) KLT 619]** and **Adhyapaka Urban Co-operative Bank Ltd. No.794 and another v. State of Kerala and Others [2022 (6) KHC 388]** is doubtful since the impact of Section 60(1A) of the CPC and the public policy aspects in applying Ruling No.1 under Rule 3 Part III of the Kerala Service Rules was not addressed before the court in

those cases.

24. As per proviso to Section 3 of the Kerala High Court Act, 1968, a Single Judge before whom a matter is posted for hearing may adjourn it for being heard and determined by a Bench of two Judges.

25. The Scheme of Section 3 of the Act was considered by a Full Bench of this Court in **Babu Premarajan v. Superintendent of Police [2000 (3) KT 177]** and held thus:-

"44. In the light of the above, we are of the opinion that, in the scheme of the provisions of the Act, the words ""adjourn it for being heard and determined by a Bench of two Judges"" appearing in Section 3 must be construed narrowly, meaning thereby, a reference to another forum of two Judges for being heard and determined by them. The word "adjourn" can not be given a wide meaning which would normally imply a single Judge adjourning it to himself or the matter coming before another single Judge due to change of sitting; a Division Bench adjourning a matter to its own forum or the matter coming before another Division bench due to change of sitting. But when a matter is adjourned by a single Judge u/s 3 of the Act to a larger forum of two Judges, in our view, the word "adjourn" must be construed to mean "refer". Secondly, in our view, there must be some exceptional circumstances to take a case out of the main part of Section 3 and to put it in the proviso. Some such circumstances justifying the matter being taken out of the main part of Section 3 and put in the proviso could be (i) conflict of views pressed by single Judges of the same Court, there being no Latter decision of the Division Bench of the same Court or of the Apex Court; (ii) an important question of law of general or public importance

affecting a large number of cases; (iii) a new legislation being challenged involving a provision which has no parallel in other statutes and validity of which is challenged, as in the Ombudsman's case pending in this Court, where reference has been made by a single Judge to a Division Bench or (iv) identical or the same question of law being considered in a matter already before the Division Bench. Needless to say, these instances are merely illustrative and cannot be exhaustive.

45. In this view of the matter, our answer to the first question is that the word "adjourn" in Section 3 must be construed narrowly, only to mean "refer". Similarly, our answer to the first part of second question is that, since an order of adjournment is a judicial order, a single Judge passing such order should give brief reasons. A judicial order, though discretionary, has to be guided by reasons. One need not write a detailed judgment. There is no occasion for giving a detailed judgment because the matter is not decided. Nevertheless, brief reasons for making a reference should be indicated. In as much as the order of reference is a judicial order, it must be supported by reasons, which is the very foundation of a judicial order....."

26. I am of the considered view that the circumstances highlighted justify taking the matter out of the main part of Section 3 of the Kerala High Court Act and placing it within the proviso. The subject matter satisfies the exceptional circumstances considered by the Full Bench of this Court in **Babu Premarajan**. Therefore, the Writ Petition is ordered to be referred for being heard and determined by a Bench of two Judges.

The Registry is, therefore, directed to place the matter before the Hon'ble the Chief Justice for appropriate action.

Before parting with the case, this Court places on record its appreciation to the learned counsel Sri.K.M.Firoz, for his valuable assistance as Amicus Curiae.

Sd/-
K.BABU
Judge

TKS/KAS