

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 18TH DAY OF MARCH 2024 / 28TH PHALGUNA, 1945

WP(C) NO. 5788 OF 2024

PETITIONER:

ASSOCIATION OF GOLD LOAN FINANCING
COMPANIES (INDIA), WITH REGISTERED
OFFICE AT GROUD FLOOR, ASHOK VATIKA,
A-3 NO.1 GURUSWAMI ROAD, NEAR OLD AIRCEL
BUILDING, CHETPET, CHENNAI, 600 031 WITH
FUNCTIONAL OFFICE AT 6TH FLOOR, MUTHOOT
TOWER, M.G. ROAD, ERANAKULAM, KOCHI,
REPRESENTED BY ITS AUTHORISED SIGNATORY
SRI.THOMAS GEORGE MUTHOOT, AGED 62 YEARS
MUTHOOT TOWERS, M.G. ROAD, ERANAKULAM,
KOCHI, PIN - 682035

BY ADVS.

ALEX.M.SCARIA

P.RAMAKRISHNAN

SARITHA THOMAS

AKSHARA RAJU

JUSTIN J. THEKKEDAM

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
MINISTRY OF COMMERCE AND INDUSTRY,
VANIJYA BHAWAN, NEW DELHI, PIN - 110011
- 2 THE SECRETARY
MINISTRY OF LAW AND JUSTICE,
4TH FLOOR, A WING, SHASTRI BHAWAN,
NEW DELHI, PIN - 110001
- 3 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 4 THE PRINCIPAL SECRETARY
DEPARTMENT OF LAW, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

5 THE STATE POLICE CHIEF
POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, PIN - 695001
BY ADVS.
SRI.S.MANU - DSGI
SRI.SUNIL KUMAR KURIAKOSE - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18.03.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner is stated to be an Association of “Gold Loan Financing Companies”; and say that their members are being put to extreme difficulty, when gold ornaments and articles pledged with them, are seized, when Crimes are registered for no fault that can be attributed to them; and when it is then disposed of, even without notice to them. They, therefore, pray that a declaration be issued to the effect that members of the petitioner have *“priority right for custody of gold ornaments pledged with them even if such pledged item is required as a material object in a crime under investigation or trial”* (sic); and further that the members of the petitioner are *“entitled to have notice before any kind of disposal of an article pledged with them and that is seized in connection with investigation or trial or trial of a crime”* (sic).

2. Sri.P.Ramakrishnan - learned counsel for the petitioner, submitted that his client has been constrained to approach this Court because, very many times when gold articles are pledged with them, they are seized by police on the allegation that it is a material object in a Crime; but over which, they finally get no control and they get then disposed of through the criminal justice system, without even notice to them. He pointed out that the members of the Association are put to extreme vexation because of

this and, therefore, that they have been constrained to approach this Court through this writ petition; further seeking a declaration that a Pawnee's rights, under the Contract Act, will prevail upon the right of custody by *de facto* complainant in a criminal case.

3. Sri.Sunil Kumar Kuriakose - learned Government Pleader, in response, submitted that, as is *ex facie* evident from the prayers made in this writ petition, what the petitioner requires is an omnibus declaration against Criminal Courts - before which the seized gold articles / ornaments are produced as material objects. He submitted that, therefore, none of the official respondents have anything to answer to the various allegations in the writ petition; but maintained that, for this reason also, this writ petition is not maintainable.

4. I must say that the afore submissions of the learned Government Pleader carry great weight because, the Criminal Procedure System postulates the manner in which articles involved in a Crime are to be produced before Court and dealt with finally. One fails to understand how the petitioner could have approached this Court seeking an omnibus declaration, that the members of the petitioner will have a priority right over custody of gold ornaments pledged with them; but which are in the custody of Courts. One cannot comprehend, with any amount of thought, how such a

prayer could have even been conceptualised, much less made; because, it is needless to say that when articles are produced before a Court, the processes under the Criminal Procedure System are immediately triggered.

5. Obviously, therefore, it is for the members of the petitioner to approach such Courts and seek appropriate remedies, including for interim custody and final possession of the articles in their possession, as the stated Pawnees of the same and from whom they were seized. These are not matters into which this Court can intervene in any manner as sought for; and am, therefore, of the firm opinion that, as correctly argued by the learned Government Pleader, the prayers sought for in this writ petition are not maintainable.

In the afore circumstances, reserving every other liberty that may be available to the petitioner and their members, I close this writ petition without any further orders.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

APPENDIX OF WP(C) 5788/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 03/04/2012 OF THE PETITIONER ORGANIZATION.
- Exhibit P2 TRUE COPY OF THE LIST OF MEMBERS OF THE PETITIONER
- Exhibit P3 TRUE COPY OF THE RELEVANT PROVISIONS REGULATING NON-BANKING FINANCE COMPANIES IN THE RESERVE BANK OF INDIA ACT.
- Exhibit P4 TRUE COPY OF THE SAMPLE, CIRCULAR DATED 08/01/2014 ISSUED BY RESERVE BANK OF INDIA.
- Exhibit P5 TRUE COPY OF THE INTERNAL CIRCULARS ISSUED BY SOME OF THE MEMBERS OF THE PETITIONER ASSOCIATION
- Exhibit P6 TRUE COPY OF THE LOAN FORM THAT IS USED IN THE MUTHOOT FINANCE LTD.
- Exhibit P7 TRUE COPY OF THE RELEVANT PROVISIONS OF THE INDIAN CONTRACT ACT IN RESPECT OF A PLEDGE.
- Exhibit P8 TRUE COPY OF THE ORDER DATED 13/03/2015 IN S C NO.274/2012 PASSED BY ASSISTANT SESSIONS COURT, KOTTAYAM
- Exhibit P9 TRUE COPY OF THE CRL. M.C. NO. 4728 OF 2015 DATED 20/07/2015 WITHOUT ANNEXURES
- Exhibit P10 TRUE COPY OF THE ORDER DATED 14/09/2023 IN CRL MC NO. 4728 OF 2015 PASSED BY THIS HON'BLE COURT.
- Exhibit P11 TRUE COPY OF THE RELEVANT PAGES OF THE W.P.(C). NO. 6377 OF 2013.
- Exhibit P12 TRUE COPY OF THE ORDER DATED 21/12/2016 IN CRL. MC. 667/2015 BEFORE THIS HONOURABLE COURT.
- Exhibit-P13 TRUE COPY OF THE JUDGMENT IN BANK OF BIHAR V. STATE OF BIHAR REPORTED IN AIR 1971 SC 1210.
- Exhibit-P14 TRUE COPY OF THE JUDGMENT IN AJAYAN @ BABY.VS STATE OF KERALA REPORTED IN 2011 (1) ILR KERALA 1
- Exhibit-P15 TRUE COPY OF THE JUDGMENT IN MOHMED INAYATULLAH V. THE STATE OF MAHARASHTRA REPORTED IN AIR 1976 SC 483.

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: 7 :

Exhibit-P16

TRUE COPY OF THE JUDGMENT IN SUNDERBHAI
AMBALAL DESAI VS STATE OF GUJARAT
REPORTED IN AIR 2003 SC 638

RESPONDENTS' EXHIBITS : NIL.