IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 17TH DAY OF AUGUST 2026 / 26TH SRAVANA, 1948

WP(C) NO. 34660 OF 2025

PETITIONERS:

1 ANTONY WAZHSON
AGED 21 YEARS, S/O WAZHSON,
T.S BHAVAN, MUKKOM CHEERY, MAYYANAD POST,
KOLLAM., PIN – 691 303.

2 MARY MANOJA
AGED 53 YEARS, W/O WAZHSON,
RESIDING AT T.S BHAVAN, MUKKOM CHEERY,
MAYYANAD POST, KOLLAM, PIN – 691 303.

BY ADV SHRI.R.KISHORE

RESPONDENTS:

1 MAYYANAD REGIONAL CO-OPERATIVE BANK NO-94
MAYYANADU POST, KOLLAM DISTRICT
REPRESENTED BY ITS SECRETARY G.RATHIRAJ.,
PIN – 691 303.

2 KERALA CO-OPERATIVE TRIBUNAL
JAWAHAR SAHAKARANA BHAVAN, DPI JUNCTION,
THYCAUD POST, THIRUVANANTHAPURAM, PIN – 695 014.

3 ANTRIYA WAZHSON
S/O WAZHSON, AGED 19 YEARS, T.S BHAVAN,
MUKKOM CHEERY, MAYYANAD POST, KOLLAM,
PIN – 691 303.

BY ADVS.
SRI.V.JAYAPRADEEP (FOR R1)
SMT.O.A.NURIYA (FOR R1)
SRI.D.S.LOKANATHAN (FOR R1)
SRI.ALAN PRIYADARSHI DEV (FOR R1)
SMT.SAJEENA ABDU T.K. (FOR R1)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

JUDGMENT

The 2nd petitioner along with her husband (Late.Wazhson) had availed credit facilities from the 1st respondent bank. The 1st petitioner and the 3rd respondent are legal heirs of late Wazhson. Upon default being committed, the bank initiated proceedings under Section 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as *'the 1969 Act'*) by filing ARC No.972/2021 before the 2nd respondent. By an award dated 17.11.2021 (produced as part of Ext.P2), the claim of the 1st respondent bank was allowed, and it was found that late Wazhson and the 2nd petitioner were liable to the 1st respondent bank for a sum of Rs.21,27,842/- together with future interest at 16% per annum. The 2nd petitioner filed Appeal No.263/2024 before the Kerala Co-operative Tribunal challenging the award. The Tribunal, by Ext.P3 order, dismissed the appeal on the finding that the appeal is barred by limitation. The petitioners are, thus, before this Court challenging Ext.P3 order and contending that the award in ARC No.972 of 2021 on the file of the 2nd respondent is also liable to be set aside for various reasons.

2. The learned counsel appearing for the petitioners would submit, firstly, that the Tribunal ought not to have rejected the appeal as time-barred. The learned counsel placed reliance on the provisions of Rule 68 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as *'the 1969 Rules'*) to contend that every award had to be communicated to the parties. It is submitted that the award forming part of Ext.P2 was never communicated to the parties. It is submitted that the 2nd petitioner obtained a copy of the award by submitting an application under the provisions of the Right to Information Act, 2005 (hereinafter referred to as '*the RTI Act*'). It is submitted that, in such circumstances, the Tribunal ought to have held that the period of

limitation for filing the appeal would start running only from the date on which a copy of the award was received by the 2nd petitioner under the RTI Act, and not from any earlier date. The learned counsel appearing for the petitioners would also submit that the proceedings initiated by the 1st respondent bank cannot be sustained in law, as there was no proper resolution passed by the Managing Committee of the bank authorising the Secretary to initiate proceedings under Section 69 of the 1969 Act. Reference is made in this regard to the authorisation which also forms part of Ext.P2. According to the learned counsel appearing for the petitioners, the authorisation is dated 06.05.2021, whereas the plaint in ARC No.972 of 2021 (which is also part of Ext.P2) indicates that it was filed on 17.03.2021. In other words, it is submitted that there was no authorisation on 17.03.2021 authorising the Secretary of the 1st respondent bank to file the plaint. It is further submitted that a perusal of the resolution clearly indicates that it was passed solely to initiate proceedings against the late Wazhson, and not against any other person. It is submitted that on this short ground the proceedings initiated against the 2nd petitioner should also be declared as unsustainable.

3. The learned counsel appearing for the 1st respondent bank refers to the counter affidavit filed before this Court. It is submitted that a copy of the summons in the arbitration proceedings was duly received by the late Wazhson and the 2nd petitioner, and the 2nd petitioner had appeared before the Arbitrator and had accepted the claim made on behalf of the 1st respondent bank by endorsing her signature on the Case Diary. It is submitted that, in such circumstances, it is not open to the 2nd petitioner to take any contention before this Court that she was not aware of the proceedings and that she was also not aware of the fact that the award had been passed on 17.11.2021. It is submitted that the contention now taken before this Court that a copy of the award was not served is not correct, as the 2nd petitioner was personally

present when the award was passed on 17.11.2021. It is submitted that the contention of the learned counsel for the petitioners that, since the award is required to be communicated in terms of Rule 68 of the 1969 Rules, the period of limitation would commence only from the date of service of the award and not from any earlier date, cannot be countenanced. It is submitted that the contention of the petitioners that there was no authorisation for initiating the proceedings before the Arbitrator cannot be accepted as the Secretary, as the Chief Executive of the bank, had every authority to initiate proceedings on behalf of the bank *de hors* the authorisation. In such circumstances, it is submitted that the petitioners have not made out any ground for interference with the order of the Tribunal.

4. Having heard the learned counsel appearing for the petitioners and the learned counsel appearing for the 1st respondent bank, I am of the opinion that there is considerable merit in the contention taken by the learned counsel for the petitioners that, in the light of the

provisions contained in Rule 68 of the 1969 Rules, it was mandatory on the part of the Arbitrator to have communicated a copy of the award to the parties. It is also to be noted that the provisions of Rule 68 of the 1969 Rules were amended with effect from 02.05.2000 and the provision which earlier required the Arbitrator to communicate only a gist of the award has been replaced by the present provision, which requires that a copy of the award/order itself be communicated to the defendant by registered post within 15 days. There is nothing on record to indicate that the award had been communicated in the manner contemplated. Therefore, I am inclined to accept the contention of the learned counsel for the petitioners that the period of limitation for filing the appeal before the Tribunal ought to have been reckoned only from the date on which the 2nd petitioner received a copy of the award pursuant to the application made under the RTI Act.

5. Insofar as the contention of the learned counsel for the petitioners that there was no authorisation in terms

of the provisions contained in Rule 67(2) of the 1969 Rules is concerned, I am of the view that since the Secretary is, even otherwise, the Chief Executive Officer of the Society, he is competent to initiate legal proceedings for and on behalf of the Society even in the absence of any specific authorisation. Rule 67(2) of the 1969 Rules mandates that where an application is filed for and on behalf of a Society, a certified copy of the resolution passed by the Managing Committee resolving to file such application shall also be produced. However, I am of the opinion that, though the word *'shall'*' is used in Rule 67(2) of the 1969 Rules, the provision cannot be construed as mandatory, and it can only be held to be directory. Thus, the failure to produce a resolution before the Arbitrator cannot be fatal to the arbitration proceedings initiated by the Society. It is settled law that the use of the word *'shall'*' in a statutory provision does not by itself indicate that the provision is mandatory, and the word *'shall'* in suitable circumstances may be read as directory and not mandatory, especially when the provision is procedural. Justice Krishna Iyer lucidly states the law thus in ***State of Punjab v. Shamlal Murari, (1976) 1 SCC 719***:

> *“**7.** It is true that, in form, the rule strikes a mandatory note and, in design, is intended to facilitate a plurality of Judges hearing the appeal, each equipped with a set of relevant papers. Maybe, there is force in the view taken by the Full Bench that certain basic records must be before the court along with the appeal if the court is to function satisfactorily in the exercise of its appellate power. In this sense, the needs of the rule transcend the directory level and may, perhaps, be considered a mandatory need. The use of “shall” — a word of slippery semantics — in a rule is not decisive and the context of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of circumstances bearing on the importance of the condition have all to be considered before condemning a violation as fatal.*
>
> ***8.** It is obvious that even taking a stern view, every minor detail in Rule 3 cannot carry a compulsory or imperative import. After all, what is required for the Judges to dispose of the appeal is the memorandum of appeal plus the judgment and the paper-book. Three copies would certainly be a great advantage, but what is the core of the matter is not the number but the presence, and the overemphasis laid by the court on three copies is, we think, mistaken. Perhaps, the rule requires three copies and failure to comply therewith may be an irregularity. Had no copy been furnished of any one of the three items, the result might have been*

different. In the present case, copies of all the three documents prescribed, have been furnished but not three copies of each. This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by the court. We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time. ......"
(Emphasis supplied)

The concurring judgment of Justice Krishna Iyer in ***Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774*** is equally enlightening:

"...I concur regretfully with the result reached by the infallible logic of the law set out by my learned Brother

Mathew, J. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

6. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justiciae where the tragic sequel otherwise would be wholly inequitable. In the present case, almost every step a reasonable litigant could take was taken by the State to challenge the extraordinary increase in the rate of compensation awarded by the civil court. And, by hindsight, one finds that the very success, in the review application, and at the appellate stage has proved a disaster to the party. Maybe, Government might have successfully attacked the increase awarded in appeal, producing the additional evidence there. But maybes have no place in the merciless consequence of vital procedural flaws. Parliament, I hope, will consider the wisdom of making the Judge the ultimate guardian of justice by a comprehensive, though guardedly worded, provision where the hindrance to rightful relief relates to infirmities, even serious, sounding in procedural law. Justice is the goal of jurisprudence — processual, as much as substantive. While this appeal has to be allowed, for reasons set out impeccably by my learned brother, I must sound a pessimistic note that it is too puritanical for a legal system to sacrifice the end product of equity and good conscience at the altar of processual punctiliousness and it is not too radical to avert a breakdown of obvious justice by bending sharply, if need be, the prescriptions of procedure. The

> *wages of procedural sin should never be the death of rights."*

(also see, on this point ***Kailash v. Nanhku**, **(2005) 4 SCC 480*** *and* ***JK Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Company, (2019) 11 SCC 332****).* Therefore, I am not inclined to accept the contention of the learned counsel for the petitioners that the proceedings initiated by the 1st respondent bank are bad in law, either for the reason that a proper resolution was not filed along with the plaint or on the ground that the resolution is dated subsequent to the filing of the plaint before the Arbitrator.

6. In the light of the above findings, Ext.P3 order of the Tribunal is set aside, and the appeal filed by the 2nd petitioner against the award in ARC No.972 of 2021 in proceedings initiated by the 1st respondent under Section 69 of the 1969 Act is restored to the file of the Tribunal. The Tribunal shall consider and dispose of the appeal on the merits after affording an opportunity of hearing to both sides. I make it clear that any contention

taken before the Tribunal regarding the resolution as contemplated by the provisions of Rule 67(2) of the 1969 Rules shall not be permitted to be taken or agitated as this question has already been decided against the petitioners by this Court.

The writ petition is ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

ats

APPENDIX OF WP(C) NO. 34660 OF 2025

PETITIONERS' EXHIBITS

Exhibit P1	**THE TRUE COPY OF THE APPLICATION DATED 07/08/2024 FILED BY THE 2ND PETITIONER UNDER THE RIGHT TO INFORMATION ACT, 2005.**
Exhibit P2	**TRUE COPY OF THE REPLY DATED 02/09/2024 ISSUED FROM THE OFFICE OF THE ARBITRATOR TO THE 2NDPETITIONER.**
Exhibit P3	**TRUE COPY OF THE ORDER DATED 08/04/2025 PASSED BY THE 2ND RESPONDENT/KERALA COOPERATIVE TRIBUNAL, THIRUVANANTHAPURAM IN APPEAL NO-263/2024 IN THE FILE OF THE SAID TRIBUNAL.**

RESPONDENT'S EXHIBITS

Exhibit R1(a)	**TRUE COPY OF THE SUMMONS DATED.11.10.2021 SIGNED BY THE 2ND PETITIONER.**
Exhibit R1(b)	**TRUE COPY OF THE CASE DAIRY SIGNED BY THE 2ND PETITIONER DATED.17.11.2021.**
Exhibit R1(c)	**TRUE COPY OF THE AWARD DATED.17.11.2021.**
Exhibit R1(d)	**TRUE COPY OF THE DEMAND NOTICE DATED.9.8.2022 SIGNED BY THE 2ND PETITIONER.**