



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2015

CORAM:

THE HONOURABLE Mr. JUSTICE S.MANIKUMAR

and

THE HONOURABLE Mr. JUSTICE G.CHOCKALINGAM

W.A.(MD)No.206 of 2015

Thirukannan

... Appellant

Vs.

1.The Managing Director,
Q 816 Ramanathapuram
District Consumer Cooperative Wholesale Stores Ltd.,
Ramanathapuram.

2.The Deputy Registrar of Cooperative Societies,
Ramanathapuram Circle,
Ramanathapuram District.

... Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 20.01.2015 made in W.P.(MD)No.306 of 2015 passed by the Learned Single Judge of this Court.

Prayer in WP(MD). 306/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the 1st respondent to reimburse the recovery made from the salary of the petitioner without any Award passed by the competent authority within the time stipulated by this Honble Court.

For Appellant : Mr.D.Sadiq Raja

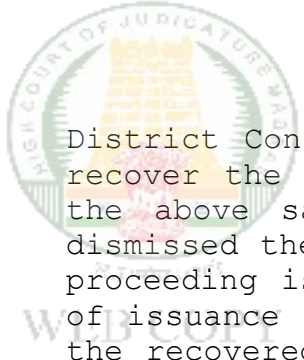
For Respondents : Mr.M.Alagadevan, Spl.G.P.

JUDGMENT

(Judgment of this Court was delivered by **S.MANIKUMAR,J.**)

On the basis of an order passed by the Cooperative Sub Register / Arbitrator in Arbitration O.P.No.41/2011 - 2012 dated 28.11.2013, the petitioner has sought for a Writ of Mandamus, directing the Managing Director, Q 816 Ramanathapuram District Consumer Cooperative Wholesale Stores Limited, Ramanathapuram, to reimburse the recovery made from the salary of the appellant / Writ petitioner.

<https://hcservices.ecourts.gov.in/hcservices/> 2. Before the Writ Court, learned Additional Government Pleader appearing for the respondents has submitted that the Deputy Registrar of Cooperative Societies, Ramanathapuram Circle, Ramanathapuram has already passed an order, directing the Managing Director, Q 816 Ramanathapuram



District Consumer Cooperative Wholesale Stores Limited, Ramanathapuram to recover the amount from the appellant / Writ petitioner. Taking note of the above said submission, the Writ Court vide order dated 20.01.2015 dismissed the Writ petition, observing that unless and until such recovery proceeding is challenged by the appellant / Writ petitioner, the question of issuance of Writ of Mandamus does not arise and that too for refunding the recovered amount. While doing so, the Writ Court has granted liberty to the petitioner to challenge the recovery proceedings in the manner known to law.

3.The order made in W.P.(MD)No.306 of 2015 dated 20.01.2015 is assailed on the ground that an award in Arbitration O.P.No.41/2011 - 2012 dated 28.11.2013 had already been passed by the Sub Registrar / Arbitrator and therefore, the respondents have to refund the recovery amount already made.

4.When the matter came up for admission, we directed the learned Special Government Pleader appearing for the Deputy Registrar of Cooperative Society, Ramanathapuram Circle, Ramanathapuram District, the 2nd respondent herein to ascertain as to whether the award dated 28.11.2013 has been challenged before any competent authority. Subsequently, when the matter is taken up for hearing, on instructions, learned Special Government Pleader for the respondents submitted that the award dated 28.11.2013 has not been challenged before the competent authority. The said submission is placed on record.

5.When the appellant raised a dispute under Section 90 of the Tamil Nadu Cooperative Societies Act, r/w Rule 107 against the Special Officer, Q816, District Consumer Cooperative Wholesale Stores Ltd., Ramanathapuram, Mr.C.Natarajan, Superintendent has appeared on behalf of the Special Officer. After considering the rival submissions, the Sub Registrar / Arbitrator passed an award in Arbitration O.P.No.41/2011 - 2012, dated 28.11.2013 and held that recovery, as ordered in Na.Ka.No.766 / 2008, dated 18.02.2011 could not be made. The Arbitrator has further ordered that any recovery made should be refunded to the appellant / Writ petitioner. An award passed by an Arbitrator, is like a decree. Mandamus cannot be issued for executing a decree. Reference can be made to few decisions.

6.In **Vemula Prabhakar And Ors. vs Land Acquisition Officer**, reported in **2002 (1) ALD 200 = 2002 (1) ALT 322**, the question raised before the Court, was whether the High Court, in exercise of its jurisdiction, under Article 226 of the Constitution of India, can issue a writ of or in the nature of Mandamus, directing the respondents to make payment in relation to the amount enhanced by the civil court, in a reference made under Section 18 of the Land Acquisition Act, 1894 ('the Act' for brevity). Reliance was placed on a decision in *Sur Reddy vs. Special Deputy Collector(LA), Medak*, reported in 1997 (1) ALD 31, wherein, it has been held that existence of remedy by way of execution petition before a civil court is not a bar and the writ petition is maintainable. While answering the said question, a Hon'ble Division Bench of the Andhra High Court, has held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

A writ of or in the nature of mandamus will be subject to exercise of sound judicial discretion. The general rule is that a writ of mandamus would ordinarily not be issued when there exists an adequate specific



legal remedy whereby the petitioner can be afforded relief in respect of the same subject matter. Mandamus is important public law remedy and does not generally supersede legal remedies. But alternative remedy must be efficacious to accomplish the same purpose wherefor mandamus is sought for and must be equally convenient, beneficial and effective. There cannot be any doubt that alternative remedy is not an absolute bar to the maintainability of a writ petition.

Assuming that a writ petition, would be maintainable, a writ of mandamus can only be issued. If there is a violation of such a writ, a contempt petition will also not be maintainable for execution of the decree. It is accepted at the Bar that even in such a case, for the purpose of execution, the petitioner has to knock the doors of the civil court. It would not be thus correct to contend that the mandamus can issue as a rule. In this view of the matter, we are of the opinion that for execution of decree a writ of mandamus would not be ordinarily entertained by this Court.

It is admitted by the learned counsel for the petitioners that if a mandamus issued by this Court is not obeyed, the only remedy is by way of contempt. In BHAGYABATI PRAMANIK (supra) and KAPILDEO PRASAD SAH (supra), the Supreme Court held that the contempt proceedings cannot be a substitute for execution proceedings. On the other hand, in an execution petition, as observed by us, a decree can be enforced either by attachment of property movable or immovable, of the State and also in a given case even the State has a judgment/decree, it can raise defence for execution." Ultimately, the Hon'ble Division Bench of Andhra High Court, held that it cannot be said that the remedy provided for under the Code of Civil Procedure, 1908 is not an adequate remedy so as to enable this Court to entertain the writ petition.

7. In **Suganmal Nandlal Bhandari vs. State Of Madhya Pradesh**, reported in **AIR 1962 MP 10**, a Honble Division Bench of Madhya Pradesh High Court held as follows:-

"A writ of mandamus cannot be issued for the execution of a decree or an order. In this connection it would be sufficient to refer to a decision of the Calcutta High Court in Kesho Prasad Singh v. Board of Revenue, ILR 38 Cal 553. That was a case where the plaintiff had obtained a decree for recovery of possession of an estate against an infant under the Court of Wards. After the suit was decreed by the trial Court the defendant, viz. the Court of Wards, preferred an appeal to the High Court. Pending the appeal the plaintiff made an application to the Court of Wards for the release of the estate and handing over possession of the estate to him in accordance with the decree of the trial Court. When the Court of Wards declined to comply with the plaintiff's request, the plaintiff made an application to the Calcutta High Court under Section 45 of the Specific Relief Act and obtained a rule calling upon the Court of Wards to show cause why the estate should not be released and delivered to the plaintiff. In discharging the rule the learned Judges of the Calcutta High Court observed :

'It is an elementary principle that recourse ought not to be allowed to an extraordinary remedy of this description, when it is not really needed. In the case before us, the plaintiff is entitled to sue in execution, he has brought such a suit and has been successful; he is entitled to execute his decree, but has not yet taken any steps in that



direction. It is well settled that a mandamus will never be granted to enforce the general law of the land which may be enforced by action; for instance, where the applicant has the ordinary legal remedy of an execution mandamus does not lie.

In *Reg. v. Victoria Park Co.*, (1841) 1 QB 288 : 55 R 249 action was brought against the treasurer of a Company and judgment was entered up against the Company. The Company had no assets. A writ of mandamus was sought commanding the Company to pay a sum of money recovered from them in the action. The Court refused to issue a writ of mandamus. The Court observed :

'.....here the plaintiff seeks only the payment of the debt and costs: for this an execution by fi. fa. is a, perfect remedy in its nature; and, if we were to issue the writ because in this particular case there are no corporation chattels seizable, it would be difficult on principle to refuse to issue it in any case where the sheriff should return *milla bona*, whether the writ had issued against a corporation or an individual; for in principle there is no distinction between the two. We are compelled, therefore, to refuse the rule for a mandamus to the corporation, to pay.'

8. In **Ghan Shyam Das Gupta vs Anant Kumar Sinha**, reported in 1991 AIR 2251, the Supreme Court held as follows:-

"The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions."

9. In **Shalini Shyam Shetty and another vs. Rajendra Shankar Patil**, reported in 2011 (1) CTC 854, the Hon'ble Supreme Court has held as follows:-

"78. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases High Courts, in a routine manner, entertain petition under Article 227 over such disputes and such petitions are treated as writ petitions.

79. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown, that a private individual is acting in collusion with a statutory authority."

10. In the light of the decisions cited supra, directions to reimburse the recovered amount on the basis of the award cannot be issued by way of mandamus. It is always open to the petitioner to take recourse for execution of the award, in accordance with law. If any proceedings are taken by the petitioner for enforcement of the award, the concerned authority may consider the reasons for delay, if any.



11. One of the reasons assigned by the Writ Court for dismissing the Writ petition is that the petitioner has not challenged the recovery proceedings. In our view, in the Arbitration O.P.No.41/2011 - 2012 dated 28.11.2013, when the Sub Registrar / Arbitrator has already held that there should not be any recovery, then there is no need for the appellant / Writ petitioner to initiate fresh proceedings. That apart, material on record further discloses that earlier the Deputy Registrar / Special Officer (full in-charge) in the proceedings in Na.Ka.No.766/08 dated 18.02.2011 has also indicated that a dispute could be raised under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 in respect of amount, mentioned therein. Accordingly, vide proceedings in Na.Ka.No.3691/2011/Sa.Pa., dated 28.07.2011 the Joint Registrar of the Cooperative Societies, Ramanathapuram, has directed the appellant / Writ petitioner to raise a dispute under Section 90 of the Tamil Nadu Cooperative Societies Act. Thus when a dispute was also raised under Section 90 of the Act, r/w Rule 107 of the Rules in Arbitration O.P.No.41/2011 - 2012, and that an award has also been passed on 28.11.2013 by Sub Registrar / Arbitrator, as stated supra, the need to challenge the recovery by a separate proceedings, does not arise. In view of the above, that portion of the order made in W.P.(MD)No.306 of 2015 dated 20.01.2015 is set aside. Liberty is given to the petitioner to take recourse for enforcement of the award, in the manner known to law.

12. With the above clarifications and directions, the Writ Appeal is disposed of. No costs.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Managing Director,
Q 816 Ramanathapuram
District Consumer Cooperative Wholesale Stores Ltd.,
Ramanathapuram.

2. The Deputy Registrar of Cooperative Societies,
Ramanathapuram Circle,
Ramanathapuram District.

+1cc to Mr. D.SAQDIQ RAJA, Advocate, in SR. No. 18789

+1cc to Special Government Pleader, in SR No. 19715.

TS/10.06.2015/5P-5C

W.A. (MD) No.206 of 2015

15.04.2015