

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.27675 of 2011

Date:01.07.2015

Between:

K.Krishna Rao,
S/o Ramulu

..... **Petitioner**

And:

The Deputy Registrar of Co-Operative
Societies, Vizianagaram District and two others.

.....**Respondents**

Counsel for the Petitioner: Sri M.Krishna Rao

Counsel for Respondent Nos.1 & 2: AGP for Co-
Operation(AP)

Counsel for Respondent No.3: Ms T.V.Sridevi

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to declare the action of respondent No.3 in threatening to seize the petitioner's house along with the belongings towards recovery of the loan amount, despite the fact that the petitioner's loan amount is being deducted from his salary every month, as illegal and arbitrary.

The petitioner has pleaded that he availed a loan of Rs.75,000/- on 28.10.1998 from respondent No.3-society; that the loan instalments payable by him are being

deducted from time to time from his monthly salary; that respondent No.3-society went into liquidation; and that the Liquidator appointed to the said society along with anti social elements has been coming to his house and threatening him to pay the entire outstanding loan amount, failing which, they will seize his house along with the belongings. He has further pleaded that unable to bear the mental torture, he has paid Rs.5,000/- on 20.05.2010, Rs.18,000/- and Rs.1,200/- on 12.02.2011, besides regular payment of Rs.1,200/- every month from his salary; that on 28.09.2010, respondent No.3, in furtherance of his illegal activities, forcibly entered into his house with some anti social elements and made attempts to dispossess him and his family members; and that left with no other alternative, he has filed this Writ Petition.

The Liquidator of respondent No.3 filed counter-affidavit and additional counter-affidavit, wherein he has *inter alia* stated that as per the record, the petitioner availed a loan of Rs.70,185/- from respondent No.3-society on 18.02.1998 repayable with interest @ 17% per annum; that he has availed another loan of Rs.4,825/- on 19.02.1998 and at that point of time, the petitioner had to pay interest of Rs.1,018/- per instalment; that the petitioner has again availed a loan of Rs.4,400/- on 13.06.1998 and another sum of Rs.1,600/- on 28.10.1998; and that from 24.11.1998 to 31.03.2001 (wrongly shown as '24.11.1990'), the petitioner paid only interest and he did not pay any amount towards the principal amount. It is further averred that as the petitioner failed to repay the loan amount, respondent No.3-society has initiated proceedings against him under Section 71 of the Andhra Pradesh Co-Operative Societies Act, 1964 (for short 'the Act') and the same was registered as Case No.110/2001-02; that the Deputy Registrar of Co-Operative Societies,

Vizianagaram has granted Certificate on 31.07.2002 for a sum of Rs.74,550/- together with interest @ 21% per annum which comes to Rs.95,454/-; and that as the petitioner did not pay the said amount, respondent No.3-society has filed E.P.No.74 of 2004-05 for execution of the decree passed by the Deputy Registrar. It is further averred that though the petitioner has received notice in E.P., he did not choose to contest the same and that he was served with a distraint order on 01.09.2005 demanding payment of the amount covered by the Certificate issued under Section 71 of the Act along with interest.

Further, in the additional counter-affidavit, the Liquidator has *inter alia* stated that as on 30.06.2015, the petitioner has to pay Rs.1,36,736/-. He has further stated that it is not true to allege that a sum of Rs.1,200/- was being deducted from the petitioner's salary every month. On the contrary, the petitioner paid Rs.1,200/- on 06.07.2011, Rs.2,000/- on 07.09.2011 and Rs.8,000/- on 08.09.2011 towards principal and interest

No rejoinder has been filed by the petitioner either to the counter-affidavit or to the additional counter affidavit.

From the pleadings contained in the counter-affidavit and the additional counter-affidavit, it is evident that many facts which have not been disclosed by the petitioner in the affidavit, filed in support of the Writ Petition, have come to light. Among the facts pleaded by respondent No.3, the uncontroverted fact remains that a Certificate under Section 71 of the Act was issued by the competent authority on 31.07.2002 and the EP filed by respondent No.3 was allowed.

In E.P.No.74/04-05, Form-I was issued by the competent authority and a distraint order was also passed under Rule-52(3) in Form-II as far back as

01.09.2005. The petitioner has evidently failed to question any of these proceedings by availing remedies under the Act. He has failed to substantiate his plea that every month a sum of Rs.1,200/- is being deducted from his salary. Indeed, this allegation of the petitioner has been specifically denied by respondent No.3 in the additional counter-affidavit.

In the light of these facts, no *Mandamus* can be issued restraining respondent No.3 from executing the Certificate obtained against the petitioner issued under Section 71 of the Act.

For the above-mentioned reasons, the Writ Petition fails and the same is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, WPMP.Nos.34146 of 2011 and 24142 of 2014 filed by the petitioner for interim relief are dismissed as infructuous.

JUSTICE C.V.NAGARJUNA
REDDY

01st July, 2015
DR