IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.192 of 2015

1.The Special Officer,
Vellore Co-operative Sugar Mills
Ltd., T.S.2 Ammundi,
Katpadi Taluk, Vellore District.

2.The Special Officer,
The Vellore Co-operative Sugar
Mills Employees Thrift and
Credit Society Ltd.,
No.V.G. 69, Ammundi,
Katpadi Town, Vellore District. .. Appellants/Defendants

Vs

S.Velayutham .. Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.11.2014 made in A.S.No.27 of 2014 on the file of the Subordinate Judge, Vellore, reversing the judgment and decree made in O.S.No.394 of 2010 dated 28.03.2014 on the file of the District Munsif, Katpadi.

For Appellants .. Mr.Poovanalingam

For Respondent .. Ms.R.Gandhimathi,
Legal Aid counsel

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JUDGMENT

The respondent being the plaintiff filed a suit in O.S.No.394 of 2010 on the file of the District Court, Katpadi seeking the following reliefs:

(a)declaring that the order of the 1st defendant bearing Na.Ka.No.62/Tha.Ka.A2 dated 30.09.2010 is illegal, inoperative and unenforceable in law;

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(b)directing the defendants to pay the cost of the suit to the plaintiff.

2.Admittedly, the respondent/plaintiff stood as a guarantor of the principal borrower one Mr.N.Karimuthu Srinivasan. Incidentally, the respondent was an ex member of the second appellant society. Proceedings have been initiated under Section 90 of the Tamil Nadu Co-operative Societies Act, 1988 (for short 'the Act'). Thereafter, an award was passed against the original borrower and the respondent, who is the guarantor. Thereafter, steps have been taken by the appellants to attach the gratuity of the respondent as he has retired subsequently. Now, challenging the aforesaid proceedings, the suit in O.S.No.394 of 2010 has been filed.

3.The suit was dismissed as not maintainable. On appeal, the lower appellate Court was pleased to reverse the judgment and decree rendered by the trial Court by placing reliance upon Section 13 of the Payment of Gratuity Act on the factual premise that there is no agreement inter se parties insofar as the mode of payment with respect to the gratuity amount is concerned. Challenging the same, the present appeal has been filed.

4.The following substantial questions of law were framed for consideration:

(1)Whether the respondent/plaintiff is having right to file this suit either before the Civil Court or before the Co-operative Appellate Tribunal?

(2)Whether Section 13 of Payment of Gratuity Act has overriding effect over Section 48 of Tamil Nadu Co-operative Societies Act, when there is a contractual obligation on the part of the pay disbursement officer to deduct salary, wages or gratuity?

5.Learned counsel appearing for the appellants submits that the suit is not maintainable and therefore the remedy available to the respondent is to approach the forum constituted under the Act. Secondly, it is submitted that the award having become final, the consequence would follow. In support of his contention, learned counsel has made reliance upon the decision of this Court in Paravakottai Village Co-operative Agricultural Loan Society Vs. J.Karthikeyan (1999-1 L.W. 180). Reliance has also been made on Section 48 of the Act as well.

6.Learned counsel for the respondent submits that in the absence of factual finding by the lower appellate Court, no substantial question of law has arisen for adjudication and no interference is required. The contention of the learned counsel for the respondent that the suit is not maintainable cannot be countenanced since the decision of the learned Arbitrator is not

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in question. What is challenged is the decision made to attach the gratuity of the respondent/plaintiff. Therefore, no question of maintainability will arise in the case on hand. Thus, for the aforesaid purpose, the respondent need not go through the mechanism provided under the Act. To put it differently, the case of the respondent/plaintiff is that there is no jurisdiction to attach the gratuity amount.

7.On facts, the lower appellate Court found that there is no agreement executed by the respondent qua the attachment of gratuity to be made by the appellants. The finding at paragraph 16 of the lower appellate Court would be apposite:

> 16.In view of the above said arguments advanced by both side counsel, this Court concludes that the appellant/plaintiff has executed a security bond under Ex.B2 and he also agreed to recover the debt amount with the borrower in the event of default payment from the properties belonging to the appellant/plaintiff. He has not executed any documents with regard to the attachment of salary, wages, gratuity. No exhibits were marked on the side of the respondent to show that appellant/plaintiff has executed or indemnified to recover the Karimuthu Srinivasan's default loan from his terminal benefits. The 2nd respondent ought to have taken steps to recover that debt amount from the Karimuthu Srinivasan who has executed and also agreed and signed in the loan agreement accepting the terms and conditions with regard to recovery from salary, wages and terminal benefits. This recitals alone found in the Ex.B1, nothing was accepted and admitted by appellant/plaintiff as argued by the respondent counsel. The respondent never taken any steps to recover the amount from the person who borrowed that loan namely Karimuthu Srinivasan. Ex.B2 executed by the appellant/plaintiff also reveals and who stood as security for Karimuthu Srinivasan stating that in default of the debt amount by the Karimuthu Srinivasan can be recovered from the properties belonging to the society.

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8.Such finding being one of fact stands as of now. Section 48 of the Act can be pressed into service only when there exists an agreement between the parties. Thus, in the absence of the same, it is not open to the appellants to make reliance upon it.

9.Section 13 and 14 of the Payment of Gratuity Act read as under:

> Section 13: Protection of gratuity: No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine,

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oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Section 14: Act to override other enactments, etc The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

10.The above said provisions, as rightly took note of by the lower appellate Court, clearly places an embargo qua the attachment in execution of any decree. The award passed by the learned arbitrator has the effect of decree. Section 14 of the Payment of Gratuity Act has got an overriding effect over other enactments. Even assuming the provisions of Payment of Gratuity Act has to be read with Section 48 of the Act and in the absence of any agreement between the parties, the appellants do not have any authority to attach the gratuity amount of the respondent.

11.Accordingly, the substantial questions of law raised are answered in favour of the respondent. The second appeal is therefore dismissed. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

To
1.The Subordinate Judge Vellore.

2.The District Munsif, Katpadi.

3.The Section Officer, VR Section
High Court Madras

+1 cc to Mr.N.Poovanalingam Advocate sr 71976
+1 cc to Mrs.R.Ghandhimathi Advocate sr 71850

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