

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04..04..2016

C O R A M

The Hon'ble Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

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

Writ Appeal No.16 of 2016

against

W.P.No.17859 of 2015

The Secretary/Special Officer
Attur Taluk, Co-operative Housing
Society Ltd.,
No.12, 1st Gandhi Road (Near Gandhi Statue)
South Udayarpalayam, Attur,
Salem 636 102. ... Appellant/4th respondent

Versus

1.R.Maniyammal ... 1st respondent/writ petitioner

2.The Registrar of Co-operative
Societies (Housing)
No.22, 4th Main Road, Gandhi Nagar,
Adayar, Chennai 600 020.

3.The General Manager,
Tamil Nadu Co-operative Housing Federation
No.48, Rithardon Road,
Veppery, Chennai 600 008.

4.The Deputy Registrar of Co-operative Societies (Housing),
Salem Region,
East Garden Road, Failands,
Salem 636016. ... Respondents 2 to 4/respondents
1 to 3

Prayer : Writ Appeal filed under Section 15 of the
Letters Patent against the order dated 26.08.2015 in
Writ Petition Nos.17859 of 2015, on the file of this
Court

WP.No.17859 of 2015:To issue a Writ of Mandamus to direct the respondents to waive the loan obtained by the petitioner husband on account of death of the petitioner husband based on the representation dated 18.6.2015 and consequently direct the fourth respondent to stop all coercive steps by way of Auction Attachment or making any encumbrance against the petitioner house property situate at M.B.Nagar Vethanayagapuram Kamakkapalayam Post Attur Taluk Salem District

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For Appellant : Mr.A.Radhakrishnan

For Respondents : Mr.M.Rajendran for R.1

Mrs.T.P.Savitha for R.2 to R.4

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J U D G M E N T

(Judgment of the Court was delivered by the Hon'ble The Chief Justice)

Admit.

2. Mr.M.Rajendran, learned counsel accepts notice for the first respondent. Mrs.T.P.Savitha, learned counsel accepts notice for respondent Nos. 2 to 4.

3. At request of the learned counsel for the parties, the appeal is taken up for final disposal.

4. The Late husband of the first respondent / Rajendran obtained a loan through the appellant society, but failed to maintain financial discipline, paying only three instalments till he passed away on 11.09.2008. This has resulted in coercive steps, being threatened for recovery of the housing loan and the petitioner approached this Court by filing the writ petition, which has been allowed by the impugned order dated 26.08.2015.

5. It has to be noticed at the inception that the averments made in the petition are not correct. No doubt, this is a hard case where late Rajendran - husband of the late first respondent/original petitioner is survived by his wife and five children. The first respondent has stated that her late husband had obtained a housing loan for a sum of Rs.2 lakhs from the appellant and that 'after obtaining the loan, he had paid

monthly instalments without any default''. This is not so, as the admitted position is that only three instalments were paid by the late husband, while the impugned order is predicated on all the instalments having been paid in time. We may notice that the writ petition was allowed without bringing the counter affidavit of the respondent on record.

6. It is the first respondent's case that she is entitled to a waiver of the loan on account of a circular dated 01.03.2012, which provides for relief in case a loan is taken from a principal society by a member/ guarantor who dies in view of the Group Insurance Scheme. It is the case of the appellant before us that the essential requirements of the scheme were not met inasmuch as:

(a) The first respondent's husband had not paid the instalments towards the loan and interest required to be paid up to the date of death.

(b) The loan waiver application had to be submitted within three months from the date of death of the borrower.

(c) The requirement of the appellant to decide the application of first respondent in terms of the circular dated 01.03.2012 was preceded by the failure of the first respondent and the legal heirs to pay the default amount before submitting the application.

7. A reading of the impugned order shows that the learned single Judge has considered the circular dated 01.03.2012 and assumed as a matter of fact that the family of the first respondent is entitled to the benefit, as all instalments have been paid and thus directed the appellant to waive the loan amount.

8. On our query, learned counsel for the appellant submits that if the outstanding loan instalments till the date of death are paid with overdue interest, the appellant would be willing to consider the case of the first respondent for waiver. In order to achieve the objective without any further litigation, we call upon the appellant to intimate to the first respondent the exact amount payable with interest till the date of death of the husband of the first respondent. The needful be done within two weeks. The first respondent would be required to clear the dues outstandings within eight weeks thereafter. On these outstandings being cleared, the application for waiver submitted

by the first respondent would be forwarded by the appellant to the third respondent, who in turn would send it to the Life Insurance Corporation.

9. We make it clear that the aforesaid order has been passed in the peculiar facts and circumstances of the case, as according to normal practice, the payment of instalments and interest is up to the date of the application.

10. The impugned order dated 26.08.2015 is set aside and the appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Registrar of Co-operative Societies (Housing)
No.22, 4th Main Road, Gandhi Nagar,
Adayar, Chennai 600 020.

2.The General Manager,
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3.The Deputy Registrar of Co-operative Societies (Housing),
Salem Region,
East Garden Road, Failands,
Salem 636016.

+1 cc to Mr.A.Radhakrishnan Advocate sr.21351

+1 cc to the Government Pleader High Court Madras
sr.21695

+1 cc to Mr.M.Rajendiran Advocate sr.21356

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