

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S. SIVAGNANAM

W.P.Nos. 6888 and 9148 of 2016

P.Govindan ..Petitioner in W.P.No.6888 of 2016

G. Suresh ..Petitioner in W.P.No.9148 of 2016

Vs

1.The Deputy Registrar/Arbitrator,
Office of the Deputy Registrar of Cooperative Societies,
Velur Road,
Namakkal, Namakkal District.

2. The General Manager,
S-351, Thiruchengode Agricultural
Procedures Cooperative sales Society
Ltd., Thiruchengode,
Namakkal District.

... Respondents 1 and 2 in
both WPs.

3. P.Govindan

4. S.Kannan

5. V.Sampurani

6. K.Rajendran

... Respondents 3 to 6
in W.P.No.9148 of 2016

Prayer in both Writ Petitions : Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the order in I.A.Nos.1 and 2 of 2015 in unnumbered CMA(CS).No. of 2015 dated 16.12.2015 on the file of the Co-operative Tribunal/Principal District Judge, Namakkal to quash the order to deposit of Rs.18,24,800/- for excusing the delay of 98 days in filing the CMA against the award of the 2nd respondent in Tha.Va.No.33 of 2013-14 dated 17.7.2014.

For Petitioner in WP 9148/16

: Mr.Titus Enock

For Respondents in WP 6888/16

:Mr.M.S.Palanisamy, for
V.R.Annagandhi.

Mr.L.P.Shanmugasundaram,

Spl. Government Pleader (Co-op)
R1 and R2

COMMON ORDER

With the consent of both the parties, these Writ Petitions are taken up for final disposal at the stage of admission itself.

2. Heard Mr.Titus Enock, learned counsel appearing for petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader (Co-op.) appearing for respondents 1 and 2.

3. In both these Writ Petitions, the petitioners are father and the son. The petitioner in W.P.No.6888 of 2016 is the father P.Govindan who was working as a Manager of the Thiruchengode Agricultural Procedures Cooperative Sales Society Ltd., Thiruchengodre, Namakkal District. The father and the son were roped into a proceedings initiated under section 90 of the Tamilnadu Cooperative Societies Act 1988. An award came to be passed by the Deputy Registrar of Cooperative Society, Namakkal dated 17.7.2014. The total amount payable in terms of the said award is Rs.91,24,000/- and the amount directed to be paid by each of the petitioners herein is Rs.18,24,800/-. This award was on the ground that the funds of the Society was misappropriated and it related to jewel loan availed by the members/customers and it appears that fake jewellery were replaced and there were several other criminal acts of misconduct committed.

4. Challenging the said order passed by the Deputy Registrar dated 17.7.2004, appeals were preferred before the Cooperative Tribunal. The appeals were time barred and were presented after a period of 98 days with an application to condone the delay.

5. The learned Principal District Judge, after considering the entire factors, appears to have been prima facie convinced that it is a case of misappropriation of funds of the Society and granting jewel loan on mortgaging of imitation jewels, i.e., fake jewellery in 77 bags. Therefore, as a condition precedent for condoning the delay, each of the petitioners were directed to deposit Rs.18,24,800/-.

6. The only ground on which the impugned order has been challenged is that onerous condition has been imposed by the Tribunal.

7. After hearing the learned counsels for the parties, perusing the materials placed on record, it has to be pointed out that there is no error in the reasoning assigned by the Tribunal while exercising discretion to condone the delay, but definitely the condition imposed is onerous as the petitioners

have been directed to pay the entire amount which falls to their share out of the total amount which has been alleged to have been misappropriated. In fact, the Tribunal would have been justified in passing conditional orders while considering the application for Stay as and when moved by the appellants/petitioners. However, while condoning the delay, such a condition, need not have been imposed, especially when the delay is only 98 days.

8. Furthermore, the Tribunal held that it does not find any genuineness or bonafide in the condone delay petitions solely on the ground that the petitioners were unaware about the execution proceedings. It may be true that the reasoning might not have been fully justified. But the fact remains that the right to appeal before the Tribunal is very valuable right since the order passed by the Deputy Registrar is put to judicial scrutiny for the first time. Moreso, as an appellate Tribunal, the Tribunal can re-appreciate the evidence, examine as to whether the reasoning given by the Deputy Registrar while exercising power under Section 90 of the Act was justified or not. Therefore, this Court is of the view that the petitioners can be permitted to prosecute the appeal, but subject to certain conditions.

9. Considering the nature of the case and also taking note of the fact that the Petitioner P.Govindan was the Manager and there was only two staff members in the said Bank, one being P.Govindan and another, a clerk and furthermore, certain property which is said to be purchased from the alleged ill gotten money has been transferred to his son G.Suresh, petitioner in W.P.No.9148 of 2016, this Court is of the view that the petitioner should be put on certain terms to be entitled to prosecute the appeal.

10. Accordingly, the Writ Petition is partly allowed by modifying the order passed by the Tribunal by directing each of the petitioners to deposit a sum of Rs.1,00,000/- (Rupees one lakh only) before the Cooperative Tribunal in CMA CFR No.610 of 2014 and CMA CFR No.611 of 2014 within a period of three weeks from the date of receipt of a copy of this order. If the petitioners comply with the said condition, then, the Cooperative Tribunal shall condone the delay and direct the appeals to be numbered, if it is, otherwise in order and post the stay petitions for hearing which shall be considered by the Tribunal uninfluenced by any of the observations made in this writ petition. If the petitioners fail to comply with the condition imposed by this Court within the time limit permitted, the benefit of this order will not enure to the petitioners and the Writ Petitions would stand dismissed automatically and

consequently, the Tribunal is entitled to take further action in the matter.

11. In the result, the Writ Petitions are partly allowed in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Deputy Registrar/Arbitrator,
Office of the Deputy Registrar of Cooperative Societies,
Velur Road,
Namakkal, Namakkal District.

2. The General Manager,
S-351, Thiruchengode Agricultural
Procedures Cooperative sales Society
Ltd., Thiruchengode,
Namakkal District.

+1 cc to Mr.V.N.AnnaGandhi, Advocate, sr.16101

+1 cc to Government Pleader, sr.16357

+1 cc to MR.J.Titus Enock, Advocate, sr.16100

+1 cc to Mr.L.P.Shanmughasundaram, Advocate, sr.16216

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