

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No.6859 OF 2016

ORDER:

This writ petition is filed challenging the order dated 10.12.2015, passed by the 6th respondent-Cooperative Tribunal, in I.A.No.180 of 2015, in CTA No.39 of 2015.

It is the case of the petitioners that they were issued with surcharge proceedings dated 18.02.2015 fastening the liability of Rs.3,13,995/- with interest at 18% p.a from the date of release of amounts to the Society. Questioning the same, the petitioners filed a Writ Petition No.28429 of 2015 before this Court and this Court after taking into consideration of the fact that the appeal against the surcharge proceedings dated 18.2.2015 lies under Section 76 of the A.P Cooperative Societies Act, 1964 (for short, "the Act"), disposed of the said writ petition by an order dated 03.09.2015 by giving liberty to the petitioners to avail the alternative remedy of appeal. Thereafter, the petitioners filed an appeal in C.T.A.No.39 of 2015, before the 6th respondent-Cooperative Tribunal at Hyderabad. Along with the said appeal, petitioners had also filed an application in I.A.No.180 of 2015 seeking interim stay of the execution of the surcharge proceedings dated 18.02.2015. The Tribunal after considering the material available on record granted the stay of execution on a condition of the petitioners furnishing 50% security of immovable properties for surcharged amount within a period of two weeks from the date of receipt of the order. Challenging the same, the present writ petition is filed.

Heard both sides.

It is the contention of the learned counsel for the petitioners that the petitioners are weavers and eking out their livelihood by weaving and they do not have neither the financial capacity nor the assets back to give the security of the nature which has been directed to furnish by the Tribunal. It is also the contention of the learned counsel for the petitioners that the surcharge proceedings issued is in utter violation of principles of natural justice apart from several irregularities which are evident from the said surcharge proceedings issued by the first respondent. The explanations

submitted by the petitioners were also not considered by the first respondents.

On the other hand, learned Government Pleader for the respondents opposes the writ petition and submits that the order passed by the Tribunal does not warrant any interference as the same has been made after considering the respective contentions of the parties. He also submits that a reasonable view has been taken and the Tribunal itself had directed the petitioners to furnish the immovable property as security, though in normal circumstances a direction to deposit 50% of the surcharge amount was the norm.

Having considered the rival submissions and having perused the record what is evident from the appeal filed by the petitioners that each of them were saddled with different amounts ranging from Rs.1,28,455/- to Rs.5,000/-. Though there are 9 petitioners fixing the individual surcharge as payable has been fixed collectively and there is no apportionment which has been made, thereby fixing the liability taking into consideration of culpability of the individual and to the extent the individual is involved. In that view of the matter, the impugned order directing the petitioners to furnish 50% security of immovable properties for surcharged amount within a period of two weeks from the date of receipt of the order, cannot be justified. Considering the fact that the very appeal is pending before the Tribunal, it would not be desirable for this Court to elaborately deal with any grounds raised by the petitioners in the present writ petition.

In those circumstances, interest of justice would be served, if a direction is given to the Tribunal to accept 25% security of immovable properties for surcharged amount.

Accordingly, the writ petition is disposed of directing the 6th respondent-Cooperative Tribunal to accept 25% security of immovable properties from the petitioners for surcharged amount. Six weeks time is granted to the petitioner for furnishing the security from the date of receipt of copy of the order. No order as to costs.

In view of the disposal of the main writ petition, Miscellaneous Petitions, if any pending in this writ petition shall also stand closed.

CHALLA KODANDA RAM,J

Date:02.03.2016.

Note:

Issue CC forthwith

B/o.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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Date:02.03.2016

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