

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.8490 of 2017 and
WMP Nos.9285 & 9286 of 2017

R.Mohanasundaram

..Petitioner

Vs.

1. Deputy Registrar of Cooperative Societies,
(Credit)/Arbitrator,
Kuralagam,
Chennai-600 108
 2. Tamil Nadu Cooperative Sugar Federation Ltd.,
rep by Managing Director,
690, Annasalai,
Nandanam,
Chennai-600 035
 3. Commissioner of Sugar / Registrar of Cooperative Societies for Sugar Mills,
Nandanam, Chennai-600 035
 4. Tribunal for Cooperative cases /
Chief Judge, Court of Small Causes,
Chennai-600 104.
- ..Respondents

PRAYER:

The writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the first respondent relating to his order dated 05.08.2014 in No.ARC.No.4511/2013 and of the fourth respondent relating to the fair and decretal order in MP.No.1339/2015 in CMA.No.14/2014 dated 28.11.2016 and quash both the orders.

For Petitioner : Mr.P.Anbarasan

For Respondents : Mr.V.Selvaraj, Additional
Government Pleader for R1 & R3
: Mr.P.Damodaran for R2
: R4 - Tribunal

ORDER:

According to the learned counsel for the petitioner, the petitioner was working as Senior Manager of the Tamil Nadu Cooperative Sugar Federation Limited, Chennai. By a policy decision of Government, the sugar mills received the Chemical SERC-333 and Lime and utilized them in the process of production of sugar after paying money. As allegation made that the chemicals did not give the expected improvement in the production of sugar, an enquiry was conducted and found that some Government officials and others along with the petitioner were responsible for the huge financial loss caused to the sugar mills. Though government officials were held responsible, the second respondent filed Arbitration claim only against the petitioner before the third respondent for a sum of Rs.11,97,51,410.40/-. Eventhough the claim was lacking material information, the third respondent entertained the Arbitration claim on 07.11.2013. The third respondent transferred the Arbitration claim for disposal to the First respondent. On 05.08.2014 in No.ARC.No.4511/2013, the first respondent passed the impugned award. Being dwelling in U.S.A., the appellant filed a preliminary statement in February 2014 though his counsel denying the claim and requesting certain documents in relation to the allegation and also pointed out that the claim was time barred. In the mean time, the petitioner and the respondents were filing statements and counter statements one after another. While being so, the second respondent filed a petition dated 18.06.2014 and 02.07.2014 to condone the delay of 3654 days from 22.11.2000 i.e. the date of filing of the claim petition before the third respondent, to 25.11.2010. The petitioner had objected for the same. At that time, the second respondent passed the impugned order dated 05.08.2014 without serving a copy on the petitioner. Only after filing a petition, the petitioner received a copy of the docket orders. Thereupon the first respondent served the order on 31.10.2014. On receiving the copy, the petitioner filed an appeal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983 before the fourth respondent Cooperative Tribunal, which was later numbered as CMA.No.14 of 2014. As a contesting respondent, the second respondent filed a petition under Section 152 of the Act read with Section 151 of Civil Procedure Code to dismiss the appeal saying that the order passed by the second respondent is not an appealable order under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 and therefore the appeal was not maintainable. However, the fourth respondent cooperative tribunal, without properly appreciating the facts and provisions of law, has allowed the application in M.P.No.1339 of 2015 on 28.11.2016 and consequently, the appeal was dismissed. Against

the said dismissal order, the petitioner has filed this writ petition before the court.

2. The learned counsel for the second respondent would submit that the Tribunal has rightly allowed the application filed by the second respondent admitting that under Section 152 (1) (a) of the Act, only against any decision or award passed or order made or proceedings taken, appeal can be filed before the Appellate Tribunal. But the present case is concerned, the appeal filed by the petitioner against the order passed by the Arbitrator is not maintainable. Further, if the petitioner is aggrieved by the said order, the petitioner has to file a revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983.

3. Considered the said submissions of the learned counsel of the respective parties and perused the materials available on record.

4. As against any decision or award passed or order made or proceedings taken under Section 90 (2), appeal can be filed before the Appellate Tribunal. Further, under Section 152, any person aggrieved by any decision or award passed or order made or proceedings taken under sub-section (1) of Section 87, sub section (2), sub section (3) or sub section (4) of Section 90, Section 118, Section 119, Section 143, Section 144 or Section 167, one can appeal to the Tribunal. But in the present case, according to the petitioner, the application filed by the second respondent was allowed under Section 90 Sub Section (6) of the Act, in which it states that Registrar may pass interim orders in the interest of justice. It is considered that the Section 90 of the Cooperative Societies Act, 1983, states that any person aggrieved by any decision or award passed or order made or proceedings taken under sub-section (1) of Section 87, sub section (2), sub section (3) or sub section (4) of Section 90 can appeal before the Tribunal. But the present order has been passed under Section 90 Sub Section (6) of the Tamil Nadu Cooperative Societies Act. As rightly pointed out by the second respondent that under Section 153 of the Act, against the said order, petitioner can only file a revision. Therefore, if the petitioner is aggrieved by the order dated 05.08.2014 passed by the first respondent in ARC.No.4511 of 2013, the petitioner has to file a revision under the said Act. Hence, the writ petition is liable to be dismissed.

5. In view of the above facts, the writ petition stands dismissed, with liberty to the petitioner to file a revision petition before the appropriate authority, if so advised, within

a period of six weeks from the date of receipt of a copy of this Order. Till such period, the first respondent shall defer the recovery proceedings. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. Deputy Registrar of Cooperative Societies,
(credit)/Arbitrator,
Kuralagam,
Chennai-600 108
2. The Managing Director,
Tamil Nadu Cooperative Sugar
Federation Ltd.,
690, Annasalai,
Nandanam,
Chennai-600 035
3. Commissioner of Sugar / Registrar of
Cooperative Societies for Sugar Mills,
Nandanam, Chennai-600 035
4. The Chief Judge / Tribunal
for Cooperative cases,
Court of Small Causes,
Chennai-600 104

+ 1 cc to Mr.P. Damodaran, Advocate SR.50056
+ 1 cc to Mr.P. Anbarasan, Advocate SR.50305
+ 1 cc to Government Pleader Sr.50305

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RK (CO)
EU (27/09/2017)