

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.10244 OF 2015

AND

M.P.NO.1 OF 2015

P.A.Vaithialingam

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Petitioner

- Vs -

1. The Puducherry Cooperative
Housing Society,
Rep. by its Secretary,
Ilango Nagar,
Puducherry 605 011.

2. The Principal District Court,
Puducherry.

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Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records, relating to the impugned order passed by the Principal District Court at Puducherry in Co-operative Appeal No.2 of 2013 dated 15.09.2014 and quash the same consequently direct the 1st Respondent Society to repay the entire excess penal interest amount collected from the Petitioner with interest from the date of collection by the 1st Respondent.

For Petitioner : Mr.K.Ramesh Kumar
For R1 : Mr.R.Sreedhar
For R2 : Court

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O R D E R

According to the petitioner, he has obtained loan for the purpose of construction of house building. Subsequently, there was a default in payment of the arrears of loan amount. Hence, for the petitioner has acquired the loan and paid Rs.14,12,524/-. The Principal amount is Rs.3,91,000/- and by calculating the interest and other penal interest, the petitioner has paid total sum of Rs.14,12,524/-, towards

principal interest, penal interest and for the period from 10.08.2008 to 25.08.2011 i.e., for the period of 9 years, 11 months and 15 days. The present dispute is under Section 140(1) (a) of the Pondicherry Co-operative Societies Act, 1972 r/w. Section 151 of CPC claiming against excess collection of penal interest paid by the petitioner. The Deputy Registrar of Co-operative Society, Pondicherry has rejected the claim of the petitioner. After dismissal of the petition by the Deputy Registrar of Co-operative Societies(Legal), Puducherry, the petitioner preferred an appeal in Co-operative Appeal No.2 of 2013, before the Principal District Court, Puducherry. The Principal District Court, Puducherry has not considered the claim of the petitioner and rejected the appeal filed by the petitioner. Hence, the present writ petition has been filed by the petitioner before this Court.

2. The learned counsel for the petitioner has submitted that the petitioner has filed this Writ Petition before this Court challenging to impose the interest at the rate of 15% p.a. for the principal amount fixed for the default period of repayment alone and the 1st respondent has to charge further 3% interest over the due amount, as per the by-laws and agreement entered in to between the parties.

3. According to the petitioner, the calculation submitted by the respondent society, clearly shows that the petitioner has paid 33% rate of interest to the respondent society. Despite the other grounds raised by the respondent before the Appellate Tribunal, it does not warrant any interference except the disputed fact, i.e., the rate of interest and calculation made by the respondent society.

4. The learned counsel for the petitioner furnished the memo of calculation before this Court and submitted that he has paid Rs.5,24,675/- to the respondent society, they are entitled to the aforesaid excess amount paid at the rate of 18% p.a. to the respondents. Therefore, the respondent society is not entitled to recover the above said excess amount and the same is liable to refund to the petitioner.

5. The learned counsel for the petitioner would submit that the factual matrix is not correct. According to the respondent society has calculated and recovered the amount from the petitioner, as per the calculation, the respondent has calculated 18% interest for the default amount. Hence, the amount recovered by the respondent society is in accordance with the by-laws as well as the contract entered between the parties. Hence, there is no question of refund of excess amount to the petitioner.

6. At this stage, both the parties had agreed that the dispute is only in respect of the charge of the penal interest for the default loan amount paid to the respondent society. The aforesaid dispute has not considered by the Tribunal. In the interest of justice, the petitioner is permitted to file review application before the Tribunal and both the parties are permitted to file any additional documents, if necessary, the same shall be filed before the Tribunal to determine the rate of interest for the default loan amount in accordance with law.

7. In view of the above facts, the writ petition is disposed of, with liberty to the petitioner to file review application within a period of four weeks from the date of receipt of a copy of this order. On receipt of the review application, without insisting upon the limitation, the Tribunal is directed to consider and pass orders in accordance with law to the aforesaid extent as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Secretary,
The Puducherry Cooperative Housing Society,
Ilango Nagar, Puducherry 605 011.
2. The Principal District Court,
Puducherry.

+1cc to Mr.K.Ramesh Kumar, Advocate, S.R.No.67978

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CS/10/10/17