

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.2245 of 2014
and M.P.No.1 of 2014

1.The Assistant Director of Handlooms
and Textiles
Coimbatore.

2.The Special Officer
CH 137 Itchipatti Powerloom Weavers
Co-operative Society Limited
Somanur Mill road, Coimbatore.

3.Shanmuga Sundaram
Special Officer
CH 137 Itchipatti Powerloom Weavers
Co-operative Society Limited
Somanur Mill road, Coimbatore.

.. Petitioners

Vs.

A.Vijayalaxmi

.. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the judgment and decree dated 30.09.2013 made in C.M.A.No.43 of 2012 on the file of the Principal District Court, Tiruppur (C.M.A.No.109 of 2011) on the file of the District Court, Coimbatore.

For Petitioner : Mr.Jayaramaraj
Govt. Pleader (C.S.)

For Respondent : Mr.M.Aravind Subramanian
ORDER

Civil Revision Petition is filed against the judgment and decree dated 30.09.2013 made in C.M.A.No.43 of 2012 on the file of the Principal District Court, Tiruppur (C.M.A.No.109 of 2011) on the file of the District Court, Coimbatore.

2.The husband of the respondent namely, Ayyappasamy was working as a Manager in Itchipatti Powerloom Weavers Co-operative Society Limited from 11.11.2005 till 2011. Enquiry has been conducted in supply of free Sarees and Dhoties, in which, the deceased Ayyappasamy himself has given a statement that he is responsible for the irregularity. In the surcharge proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, enquiry has been conducted and his responsibility has been fixed. Since the said Ayyappasamy committed suicide on 14.09.2011, his property has been attached, as per order dated 05.11.2011. The same has been challenged by the respondent by way of C.M.A.No.43 of 2012, in which, the attachment order has been set aside, against which, the present revision has been preferred by

the Government.

3.Learned Government Pleader (CS) appearing for the petitioners would submit that it is true, the property has been purchased in the name of both the respondent as well as her husband/deceased Ayyappasamy. In the order dated 05.11.2011, entire property was attached. But however, he would submit that the deceased himself has given an undertaking that he is responsible for the loss to the Society. So his half share in the property has to be attached. The Co-operate Appellate Tribunal has not considered the above aspect in proper perspective. Hence, he prays for setting aside the fair and decreetal order passed by the appellate Tribunal in respect of half share in the property.

4.Resisting the same, learned counsel for the respondent would submit that husband of the respondent committed suicide on 14.09.2011. The petitioners have not served any enquiry report and surcharge proceedings and they served only the order of attachment of entire property. The property was purchased by the respondent and her husband on 25.05.2005. Therefore, the respondent is the owner of half share of the property and that her

property has to be released. He would further submit that she is ready to discharge the amount due by her husband. So she wants time to discharge the same. Therefore, he prays for waiver of the interest, since the respondent has not received any enquiry report, surcharge proceedings and notice before attachment.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.It is an admitted fact that Ayyappsamy, who is the husband of the respondent, was working as a Manager in Itchipatti Powerloom Weavers Co-operative Society Limited. He committed suicide on 14.09.2011. During his tenure, there was some irregularity in the society. Hence, enquiry has been conducted, in which, the husband of the respondent has given a statement on 21.06.2011 stating that he is responsible for all the irregularities in the Society. But unfortunately, Ayyappasamy committed suicide on 14.09.2011. So his property has been attached. Admittedly, as per the sale deed dated 25.05.2005, the property was attached in pursuant to the conditional attachment order in C.E.P.No.2 of 2011 dated 05.11.2011 and on the basis of the order, entire property of

Ayyappasamy and Vijayalaxmi has been attached.

7.It is pertinent to note that since the respondent and her deceased husband are joint purchasers, each entitled half share, so half share of the wife/respondent is not liable for attachment. The half share of the deceased Ayyappasamy alone is liable for discharging of the liability. Hence, attachment in respect of half share of the property of the respondent ordered to be raised by the Co-operative Appellate Tribunal is hereby confirmed.

8.In respect of half share of the property in respect of Ayyappasamy is concerned, he has committed irregularity in the Society and he also admitted the same by stating that he is responsible for the irregularity. Admittedly, surcharge proceedings has not been given to the respondent and that she is not aware of the fact that how much due to her husband. Today, the respondent is ready to pay the amount to discharge her husband liability. However, the respondent is claiming waiver of interest. It is to be noted that she has not furnished details of the liability of her husband, before the property has been attached. However, this Court finds it appropriate to fix 6% interest instead of 12.5% and

that will meet out the ends of justice. Accordingly, the respondent shall pay the liability of amount of Rs.8,47,949/- with interest at the rate of 6% from the date of conditional attachment order dated 05.11.2011 made in C.E.P.No.2 of 2011, till payment before 22.04.2017, failing which, the property of Ayyappasamy namely, half share in the property is hereby attached.

9.With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

03.03.2017

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Note: Registry to issue order copy on 06.03.2017

To

1.The District Court, Coimbatore.

2.The Principal District Court

Tiruppur.

R.MALA,J.

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