

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2017

CORAM

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.11893 of 2017 and
W.M.P.Nos.12803 & 12804 of 2017

K. Subramani ... Petitioner

Vs.

1. The Deputy Registrar of Cooperative Societies,
Dharmapuri Circle, Dharmapuri.
2. The DD 14 Dharmapuri District Central
Cooperative Bank Employees Cooperative Thrift and
Credit Society, rep. by its Special Officer, Dharmapuri.
3. The Sub-Registrar,
Dharmapuri - 636 701. ... 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 relating to the impugned order of attachment passed by the 1st respondent in his R.C.No.2573/2016 Sa.Pa.1 dated 05.07.2016 and quash the same as illegal.

For petitioner : Mr.R.Thamaraiselvan

For R1 to R3 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

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O R D E R

The petitioner has filed this writ petition to issue a Writ of Certiorari calling for the records relating to the impugned order of attachment passed by the 1st respondent in his R.C.No.2573/2016 Sa.Pa.1 dated 05.07.2016 and quash the same.

2. By consent of both the parties, the main writ petition itself is taken up for final disposal.

3. According to the learned counsel for the petitioner, when the petitioner applied for Encumbrance Certificate in respect of his own property to the third respondent, the petitioner came to know that in Column No.1, the name of the second respondent has been entered on 05.07.2016. On enquiry, the third respondent informed that an order of attachment has been passed by the first respondent on 05.07.2016 against the petitioner's self acquired property. On requisition, the petitioner was provided with a copy of the attachment order dated 05.07.2016 by the third respondent on 21.04.2017. When the petitioner enquired the first respondent, it was informed that the petitioner's wife sanctioned loans to the members of the society in an irregular manner and failed to recover the same from the borrowers, thereby causing financial loss to the second respondent society and hence her husband's (petitioner herein) property has been attached under Section 167 of the Tamil Nadu Co-operative Societies Act 1983 towards her liability, when an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 is still pending against the petitioner's wife

4. According to the learned counsel for the petitioner, order of attachment has been passed by the first respondent, behind the back of the petitioner, without any prior notice and without providing any opportunity to the petitioner. Therefore, the petitioner has filed this Writ Petition before this Court.

5. The learned Special Government Pleader would submit that the aforesaid attachment order passed by the first respondent is in accordance with law. Further, if the petitioner is aggrieved by the impugned order, he has a remedy to file an appeal before the appellate authority. Therefore, the Writ petition is not maintainable before this Court.

6. Heard, the learned counsel for the petitioner and the learned counsel for the respondents. Perused, the materials available on record.

7. In fact, an identical issue was considered by this Court in the case of E.Murugan and Others Vs. The Registrar of Co-operative Societies and Others (W.P.No.11143 to 11146 of 2015 dt 17.04.2015), wherein this Court accepted the contentions raised by petitioners therein and set aside the impugned proceedings. The operative portion of the said order reads as follows.

"9. It is relevant to extract Section 167 as well as Rule 140 of the Co-Operative Societies Act.

167. Furnishing of Security and attachment of property.-

(1) Where the Registrar is satisfied on the application of a registered society in respect of

a reference made to him under sub-Section (1) of Section 90 or on the application of a liquidator appointed under Section 138 in respect of the proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of Section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the conduct of any person under Section 87 that any party to the reference or the person, as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid.

(2) The Registrar may also in the order made under subsection (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent Civil Court:

Provided that no order for conditional attachment shall be made under this sub-section unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the Registrar, as the case may be.

"Rule 140. Mode of making attachment before judgment:

(1) Attachment of property under Section 167 shall be made in the manner provided in the foregoing rules of this chapter.

(2) Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in the foregoing rules of this chapter.

(3) Where a direction is made for the attachment of any property under sub-rule (1), the Registrar shall order the attachment to be withdrawn.-

(a) when the party concerned furnishes the security required together with the security for the cost of the attachment; or

(b) When the Registrar makes an order under sub-section (1) of Section 167 that the party concerned need not repay or restore any money or property or contribute any sum to the assets of the society by way of compensation; or

(c) when the dispute referred to in sub-section (1) of section 90 has been decided against the party at whose instance the attachment was made; or

(d) when the liquidator determines under clause (b) of sub-section (2) of section 139 that no contribution need be made by the party concerned.

(4) Attachment made under sub-rule(1) shall not affect the rights existing prior to the attachment of persons not parties to the proceedings in connection with which the attachment was made, not bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.

(5) Where property is under attachment by virtue of the provisions of this rule and a decree is subsequently passed against the person whose property is attached, it shall not be necessary upon an application for execution of such decree to apply for re-attachment of the property.

10. A perusal of the impugned order would disclose that in terms of Section 167(1), no order has been passed calling upon the petitioners to

furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid. Admittedly, the impugned order is dated 09.04.2015 and the petitioners were called upon to furnish security for the said sum on the very same date. According to the petitioners the notices were served on them by force on the very same date.

11. In the light of the said infirmity, it is not necessary for the writ petitioners to invoke the alternative remedy available as pointed by the learned counsel appearing for the Respondents 1 to 5.

12. In the result, all the writ petitions are partly allowed and the impugned order dated 09.04.2015 is set aside and the matter is remitted back to the third respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-Operative Societies Act r/w. Rule 140 of the Tamil Nadu Co-Operative Societies Rules. It is made clear that in the interregnum, the petitioners shall not alienate or encumber or create third party rights in respect of the immovable properties. The third respondent shall make every endeavour to pass fresh orders in terms of the above said provisions within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed. "

The legal issue involved in this Writ petition is covered by the aforesaid decision of this Court.

8. In the result, the writ petition is partly allowed and the impugned Order of attachment dated 05.07.2016 passed by the first respondent in Rc.No.2573 of 2016 which was received by the petitioner through Sub-Registrar on 21.04.2017 is set aside and the matter is remanded back to the first respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Cooperative Societies Act read with Rule 140 of the Tamil Nadu Cooperative Societies Rules. It is made clear that till the order is passed by the first respondent, the petitioner shall

not alienate or encumber or create third party right in respect of the immovable properties. The first respondent is directed to pass fresh orders in terms of the above provisions within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Registrar of Cooperative Societies,
Dharmapuri Circle, Dharmapuri.
2. The Special Officer,
The D.D 14 Dharmapuri District Central
Cooperative Bank Employees Cooperative Thrift and
Credit Society, Dharmapuri.
3. The Sub-Registrar,
Dharmapuri - 636 701.

+1cc to M/s.R.Thamarai Selvan, Advocate, S.R.No.41415

+1cc to M/s.L.P.Shanmugasundaram, Advocate, S.R.No.41554

+1cc to the Government Pleader, S.R.No.42120

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