

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 19502 of 2015

and

M.P. No.1/2015 and WMP No.23401/2016

Ettiappan

..Petitioner

Vs.

1. The Registrar of Co-Operative Societies,
Kilpauk, Chennai.
2. The Co-Operative Sub Registrar/Arbitrator,
Office of the Deputy Registrar (Credit),
Chennai - 108.
3. MES (Defence) Employees' Co-operative,
Thrift & Credit Society Ltd.,
Regd.No.XC-176,
Garrison Engineer,
Fort St. George,
Chennai-9.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records relating to the proceedings of the 2nd respondent in Claim No.251/2014-15 dated 29.05.2015 and to quash the same.

For Petitioner : Mr. C. Veeraraghavan

For Respondents: Mr.V. Selvaraj,
Addl. Govt. Pleader

O R D E R

The petitioner has filed the present writ petition, challenging the proceedings of the 2nd respondent in Claim No.251/2014-15 dated 29.05.2015, issued under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983.

2. The learned counsel for the petitioner submitted that the petitioner availed loan for a sum of Rs.1,00,000/- from the 3rd respondent Society in the year 2002. The same was deducted from the monthly salary of the petitioner, till the 3rd respondent Society became defunct. When the petitioner retired from service, by attaining the age of superannuation, a sum of Rs.40,000/- was deducted from his retirement benefits as full and final settlement of the loan. Whilesso, in the month of April 2015, the petitioner received a summon from the 3rd respondent, stating that proceedings in Claim No.251/2014-15 for recovery of a sum of Rs.1,46,498/- have been initiated. On the basis of the summons issued under Section 90(1) of the Tamil Nadu Cooperative Societies Act, the petitioner appeared for enquiry, explained that the matter has been settled and also requested to furnish a copy of the enquiry report. The petitioner also pointed out that the claim of the 3rd respondent is barred by limitation. Without considering the said submissions of the petitioner, the impugned order was passed by the 2nd respondent on 29.05.2015, directing the petitioner to pay a sum of Rs.1,47,498/- with further interest @ 16% from 01.06.2015 till the date of realisation.

3. According to the petitioner, it is found from the impugned order, that the award has been passed mechanically and in a stereo type manner, in printed forms. There is no justification in the manner award was passed by the 2nd respondent. As per the provisions of the Act and in the light of the orders passed by this Court in W.P. Nos.7648, 16617 & 31309 of 2015 dated 06.01.2017, in the case of C. Kamaraj vs. The Registrar of Cooperative Societies, reported in 2017 (1) CTC 258, the respondents have to furnish a copy of the enquiry report to the petitioner. Further, no opportunity was given to the petitioner for making his objections before the 3rd respondent. According to the petitioner, neither a copy of the complaint nor any relevant documents were furnished to the petitioner, before passing the impugned order. Thus, the respondents have failed to follow the procedure as contemplated in the Act. Therefore, the petitioner is challenging the said award before this Court, by filing this writ petition.

4. Per contra, on instructions, learned Additional Government Pleader would submit that the contention of the petitioner is not correct. The petitioner has not disclosed the correct fact before this Court. According to the respondent, the summons were served and documents were also furnished to the petitioner. In response to the said summons, the petitioner appeared on 20.05.2015 before the 2nd respondent and undertook to pay a sum of Rs.75,000/- immediately. The said fact has not been disclosed before this Court. Therefore, the writ petition is liable to be dismissed.

5. Heard the rival submissions made by the learned counsel for the parties and perused the material available on record.

6. On perusal of the award passed by the 2nd respondent, the same is liable to be set aside for the reason that the said award is passed without following the procedures contemplated under the Act. No reasoning is stated in the award. According to the respondents, on receipt of the summons the petitioner has appeared in person on 20.05.2015 and undertook to pay a sum of Rs.75,000/- immediately, in the prevailing circumstances. But, he also disputed the balance amount to be paid, in the said statement. Eventhough the petitioner has not disclosed the said fact before this Court, taking into consideration the objections made in the statement before the authority, this Court is of the view that an opportunity of hearing should be granted to the petitioner for adjudication of the dispute, under Section 90 (1) of the Tamil Nadu Co-operative Societies Act, 1983.

7. In view of the above facts, the award passed by the 2nd respondent is set aside and the case is remanded to the 2nd respondent, to be considered afresh, after affording an opportunity to the petitioner by providing necessary documents as requested by the petitioner and pass orders on merits, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. However, as per the undertaking given to the 2nd respondent regarding payment of Rs.75,000/-, the same shall be paid to the 3rd respondent within a period of six weeks. Learned counsel for the petitioner also undertakes that the aforesaid condition would be complied, by the petitioner within the said period. It is made clear that if the pre-condition is not complied with by the petitioner, it is open to the respondents to proceed with, in accordance with law.

6. This writ petition is allowed, with the above direction. Consequently, the Miscellaneous Petitions are closed. No costs.

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Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

avr

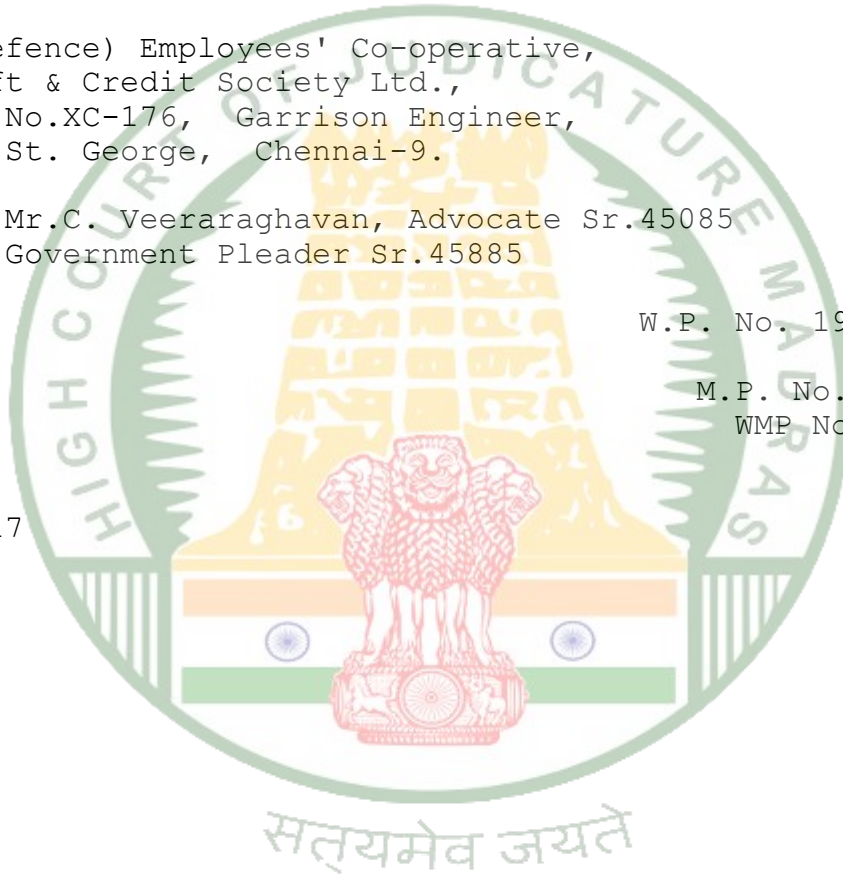
To

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+ 1 cc to Mr.C. Veeraraghavan, Advocate Sr.45085
+ 1 cc to Government Pleader Sr.45885

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CS-J
EU 16.08.17



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