

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

WP.No.18324 of 2016 and
WMP.No.16030 of 2016

S.Manohar

..Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Salem Circle,
Salem.

2.The General Manager,
S.1216, Subramania Nagar Co.op. Urban Bank Ltd.,
Salem.

3.Arasakumar

4.Amutha

.. Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for entire records pertain to the award passed by the 1st respondent in award No.2828/2004-2005 dated 15.06.2005 as confirmed in Appeal C.M.A (CS) No.4/2008 Judgement and Decree dated 31.07.2014 on the file of the learned Principal District Judge, Salem, quash the same and consequently direct the Second respondent not to proceed with the mortgaged property under loan No.170, dated 05.01.1999.

For Petitioner : Mr.S.Sivakumar

For Respondents: Mr.V.Selvaraj,
Additional Government Pleader
(for R1)

Mr.L.P.Shanmugasundaram,
Special Government Pleader
(for R2)

No appearance (for R3 and R4)

ORDER

The petitioner along with parents availed loan for a sum of Rs.6,00,000/- from the second respondent for the purpose of business development by mortgaging immovable property at the rate of 19% per annum and agreed to repay the loan amount in 60 installments. The petitioner and his parents were regular in payment of monthly loan dues. The second respondent/bank has preferred a claim No.2828/2004-2005, under the Tamil Nadu Co-operative Societies Act 1983 before the first respondent against the petitioner and his parents to realise the amount of Rs.11,36,324/-, (including principal, interest and expenses) which is due at the time of filing arbitration claim. After the death of Mr.P.K.Siddhaiyan, who is the father of the petitioner, the other legal heirs are also brought as party to the arbitration proceedings. In the arbitration award, the first respondent directed the petitioner to pay an amount of Rs.12,00,480/- at the rate of 21% per annum till the date of repayment of the amount. As against the same, the petitioner has filed C.M.A.(C.S).No.4/2008 before the Principal District Court, Salem. The Tribunal after hearing the parties concerned dismissed the said appeal. Challenging the said order passed by the Tribunal, the present petition has been filed before this Court.

2. The learned counsel for the writ petitioner would submit that the Tribunal has not appreciated the case of the petitioner and wrongly dismissed the appeal. Further, the petitioner has strongly opposed the rate of interest imposed by the Tribunal at the rate of 21% per annum, which is unjustifiable and contrary to the decision of this Court reported in 2017 (3) LW 565. The learned counsel for the petitioner would also contend that in the light of above cited judgment, the Tribunal can be considered the rate of interest awarded to the petitioner.

3. The learned Additional Government Pleader would submit that despite several opportunities given to the petitioner, he has not come forward to settle the due amount to the bank. The petitioner is not entitled to any waiver of the interest. As on 18.03.2017, the petitioner has to pay a sum of Rs.26,86,664/-. After deducting a sum of Rs.2,00,000/-, which was already paid, the petitioner has to pay a sum of Rs.24,86,664/- to the respondent/bank.

4. In view of the submissions made by the learned counsel for the parties and perused the materials produced before this Court, it is admitted that the petitioner borrowed money from the respondent/bank and there is no dispute regarding the calculation of the due amount to the bank. The main contention of the petitioner is that interest portion is exorbitant. On

the basis of the terms and conditions of the agreement between the parties, the Tribunal has fixed the interest at the rate of 21% per annum. But the same is contrary to the decision of the division Bench of this Court reported in 2017 (3) LW 565, wherein the details of the interest rate was discussed by considering Section 34 of the CPC and Section 152 of the Tamil Nadu Co-operative Societies Act and was held that under the Act, the Arbitrator and the Tribunal have got absolute discretion to award interest at any reasonable rate not exceeding contractual rate following the principles laid down by the Hon'ble Supreme Court in N.M.Veerappa Vs. Canara Bank, 1998-2-L.W. 26. In the light of the said decision of the division Bench of this Court, the Tribunal has got the discretionary power to award interest at any reasonable rate.

5. Taking into consideration the facts and circumstances and in the light of the judgment stated supra, this Court is inclined to set aside the award only in respect of the interest at the rate of 21% per annum and remanded back this matter to the Tribunal to decide the rate of interest, in the light of the decision rendered by this Court in 2017 (3) LW 565 as expeditiously as possible within a period of three months from the date of receipt of a copy of this order.

6. The learned counsel for the petitioner would submit that the petitioner had already paid a sum of Rs.1,43,100/- and the respondent society has also received the same and issued a receipt for the said payment. The tribunal shall also consider the same at the time of hearing of the appeal. In so far as the remaining portion of the order is concerned, the same is unaltered and is confirmed.

Hence, this writ petition is allowed to the above said extent of interest portion. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The Deputy Registrar of Co-operative Societies,
Salem Circle,
Salem.

2.The General Manager,
S.1216, Subramania Nagar Co.op. Urban Bank Ltd.,
Salem.

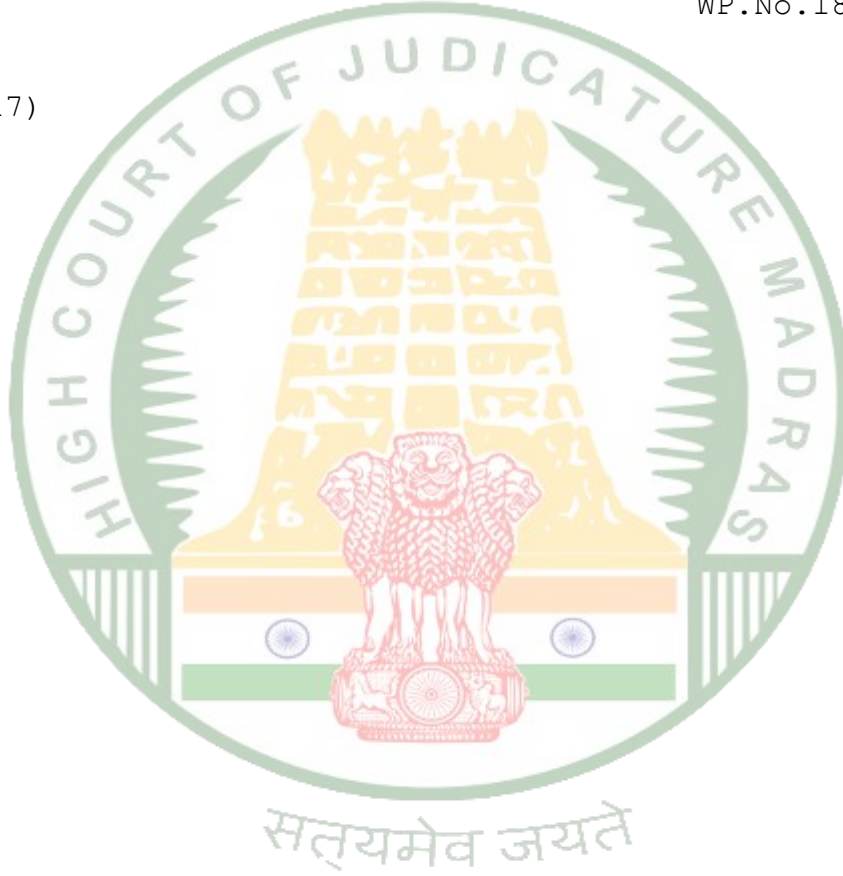
+1cc to Mr.K.Gandhi Kumar,Advocate sr.55530

+1cc to Mr.L.P.Shanmugasundaram,Advocate sr.56096

+1cc to Government Pleader sr.55674

WP.No.18324 of 2016

vgI (co)
ss (1/9/2017)



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