

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 18853 of 2016
and
W.M.P.Nos.16451 and 16452 of 2016

1.S.Kalaimani
2.S.Annamalai .. Petitioners

..Vs..

1. The Deputy Registrar of Co-operative Societies,
Tiruchengode Circle, Tiruchengode,
Namakkal District.
2. The General Manager,
No.8994, Tiruchengode Co-operative Urban Bank,
Tiruchengode,
Namakkal District. .. 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 impugned order passed by the 1st respondent in his proceedings CEP.No.07/2015-2016, dated 30.11.2015 and quash the same and pass further orders.

For Petitioners : Mr. C. Prakasam

For Respondents : Mr. S.T.S. Murthy, AAG
Assisted by Mr. L.P. Shanmugasundaram
Spl. Govt. Pleader

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O R D E R

The petitioners in this writ petition, seeks quash the impugned order passed by the 1st respondent in his proceedings CEP.No.07/2015-2016, dated 30.11.2015.

2. Learned counsel for the petitioners submitted that the first petitioner is a licensed stamp vendor and the second petitioner is working in the IT Field and out of their hard earned income, the petitioners have purchased the said property,

against which the first respondent has passed an order of attachment, for the alleged irregularities committed by the husband of the 1st petitioner/ father of the 2nd petitioner. According to the petitioners, they are no way connected with the second respondent-Bank, that they purchased the said properties in the year 2011 prior to the period of irregularities said to have been committed by the 1st petitioner's husband and that he was working as a Manager in the 2nd respondent-Bank during the year 2015 and that for the alleged irregularities committed by the Board of Directors and other higher officials during the period from 25.03.2014 to 21.08.2015, the 1st petitioner's husband and two other employees were suspended.

3. Further, the learned counsel for the petitioners would submit that without giving an opportunity to the petitioners, the first respondent has passed the impugned order, in violation of Section 167 of the Tamil Nadu Co-operative Societies Act. Therefore, the impugned order passed by the first respondent is liable to be set aside.

4. The learned Additional Advocate General would submit that the contention of the petitioners that the said property had been purchased by the petitioners out of their own income, is not correct. And that the order of attachment passed by the first respondent is in accordance with the said Section 167 of the Tamil Nadu Cooperative Societies Act.

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

6. The impugned attachment order passed by the first respondent has been challenged by the petitioners only on the ground that the first respondent has violated the principles of natural justice, especially without giving any notice to the petitioners, the impugned attachment order has been passed. Section 167 of the Tamil Nadu Co-operative Societies Act, reads as follows:-

"Section 167: Furnishing of security and attachment of property.-

(1) Where the Registrar is satisfied on the application of a registrar of 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 sub-section (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."

7. It is seen from the above submissions that the first respondent has not followed the principles of natural justice and no reasoned order has been passed under the provisions of Section 167 of the Act. In view of the above, the impugned order of attachment passed by the first respondent is liable to be set aside.

8. Therefore, the impugned order passed by the first respondent in his proceedings CEP.No.07/2015-2016, dated 30.11.2015 is quashed and accordingly, the Writ Petition is allowed. However, liberty is granted to the first respondent to proceed, in accordance with law. Consequently, the connected M.P is closed. No order as to costs.

9. On perusal of the impugned attachment order passed by the first respondent, namely the Deputy Registrar, it is seen that he has passed an additional attachment order. The said order has been passed by the first respondent without following Section 167 of the Tamil Nadu Co-operative Societies Act. Sub-sections 1 & 2 therein have stipulated some procedures to be followed, before passing an additional attachment order. Aggrieved by the similar types of order passed by the Deputy Registrar under Section 167, several Writ Petitions have been filed. It shows that the concerned authority has not considered the relevant provisions of the Act and without having the legal knowledge to decide the issue under Section 167 of the Act, such orders are passed. Therefore, the Registrar of Co-operative Societies shall make necessary arrangements to train the Deputy Registrars of Co-operative Societies, who are dealing with the disputes arising between the members and the Society, under Sections 87, 90 and 167 of the Tamil Nadu Co-operative Societies Act. It is also brought to the notice of this Court that during the earlier period, the Deputy Registrars were given training by legally eminent persons and as of now, there is no such training conducted by the Department for the Deputy Registrars of the Co-operative Societies, who are dealing with the aforesaid provisions of the Act. Hence, this is the right time for the Registrars to look into the matter and to issue appropriate instructions to the concerned authorities to conduct training for the Deputy Registrars, especially who deals with the disputes, with the assistance of legal experts.

10. Pursuant to the above opinion expressed by this Court, the Additional Registrar has produced a copy of the proceedings issued by the Registrar of Cooperative Societies, in Rc.No.24273/2017/PMCT3 dated 13.04.2017 regarding the training programme scheduled to be conducted for the Deputy Registrar of Cooperative Societies, with the assistance of legal experts.

सत्यमेव जयते
-s/d-

Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

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To

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Namakkal District.
2. The General Manager,
No.8994, Tiruchengode Co-operative Urban Bank,
Tiruchengode,
Namakkal District.
3. The Registrar of Co op
Societies
Kilpauk, Chennai

+1 CC to Mr.L.P. Shanmuga Sundaram, Advocate sr 23113
+1 Cc to Mr.C. Prakasam, Advocate sr 23379
+1 CC to Govt. Pleader sr 23269

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