IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.19422 of 2014

S.Duraisamy
Proprietor,
Yoga Prakash Rice and Sago Factory,
Valayamadevi Post,
Veeraganur Main Road, Attur Taluk,
Salem District. .... Petitioner

Vs.

1 S.No.94 Attur Town Co-operative Bank Ltd.
Rep. by its General Manager.
Arunagiri Nathar Street.
Attur Town Salem District.

2 The Deputy Registrar of Co-operative Societies,
Attur Circle, Attur Town,
Salem District. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records relating to the Impugned Order dated 25.04.2014 in C.M.A. (CS) No.5 of 2012 on the file of the Principal District Judge Salem confirming the order of the Deputy Registrar of Co-operative Societies Attur Circle dated 22.03.2012 and quash the same.

For Petitioner : Mr.K.Rajasekaran

For Respondent No.1 : Mr.T.Murugamanickam
Sr. Counsel for
Ms.Zeenath Begum

For Respondent No.2 : Mr.V.Selvaraj
Addl. Govt. Pleader

O R D E R

According to the petitioner, petitioner availed Cash Credit loan of Rs.2,00,000/- on 27.3.1993 under CC A/c No.173/SSI CC which was subsequently enhanced at the request of the petitioner to Rs.5 lakhs on 1.1.1994, then Rs.10 lakhs on 25.1.1997 and then Rs.15 lakhs on 3.2.1998 for his business as working capital. Due to the various external factors, the petitioner's factory faced huge loss and hence, he could not repay the said loan.

2 The Government of Tamilnadu by its order under G.O.(2D) No.12, dated 28.2.2009, reduced the rate of interest from 19% to 12% p.a. for non-agriculture sectors. According to the petitioner, the first respondent without following the direction under the said G.O. refused to reduce the interest from the date of sanctioning of the loan. By letter, dated 3.9.2009, the respondent Bank informed that for reducing the rate of interest in the above loan, the period will be recknoned to 1.1.2001 and not the date of sanctioning of the loan on 27.3.1993. Aggrieved by the said letter, the petitioner has filed W.P.No.20279 of 2009. In M.P.No.3 of 2009 in the above writ petition, this Court passed an order directing to deposit 25% of the loan amount worked out by the respondent of Rs.3,10,430/- in fixed deposit in the respondent bank. Thereafter, the above writ petition was dismissed on 7.7.2011 on the ground that the petitioner could avail the remedy under Section 90 of the Tamil Nadu Co-operative Societies Act. Pursuant to the said order, the petitioner has filed an application before the second respondent for reduction of interest from the date of sanctioning of the loan. The second respondent by order, dated 22.3.2012 held that the benefit of reducing the rate of interest to 6% will be given effect as on 1.1.2001. Aggrieved by the said order, the petitioner filed an appeal before the Principal District Judge, Salem in C.M.A.(CS) No.5 of 2012. However, said appeal was also dismissed by order, dated 25.4.2014 confirming the order of the second respondent.

3 The learned counsel for the petitioner would submit that the Court below failed to appreciate the case of the petitioner. As per the Government order, petitioner is entitled to get concession from the date of sanctioning of the loan. According to the petitioner, the loan amount has been sanctioned in the year 1993 and the last renewal by the petitioner on 1.3.2001. Therefore, 2nd respondent as well as the tribunal failed to see the Government order for granting of concession from the date of sanctioning of the loan amount. Therefore, the order passed by the tribunal is liable to be set aside.

4 The learned Senior counsel for the first respondent would submit that the petitioner raised a dispute regarding the amount payable on this Cash Credit Loan Account and the matter was referred to arbitration under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 in ARC No.589/2005-2006 before the second respondent namely, Deputy Registrar of Co-operative Societies, Attur who passed an award against the petitioner for a sum of Rs.25,02,442.40 and the same has become final. He further stated that when the first respondent was taking steps to execute the award, the Government of Tamil Nadu issued G.O (2D) No.77 Co-operative, Food and Consumer Protection (CC1) Department, dated 22.7.2009. Taking into account the scheme formulated in the G.O. referred to above, the first respondent bank made a demand of a sum of ***Rs.12,41,723.10** with interest at 6% at the rate prescribed by the G.O., as being due and payable on the Cash Credit loan of Rs.15 lakhs borrowed by the petitioner as on 1.1.2001. The learned Senior counsel for the first respondent would submit that by reply dated 28.8.2009, citing the G.O (2D) No.77 Co-operative, Food and Consumer Protection (CC1) Department, dated 22.7.2009, the petitioner claims that the date of loan should be taken as 1.1.2001 and 6% interest thereon should calculated from that date and not from the date of the last renewal of Rs.15 lakhs as on 3.2.1998 which was refused by the first respondent bank by letter, dated 3.9.2009. Challenging the said letter, the petitioner has filed W.P.No.20279 of 2009 and the same was dismissed by this Court by order, dated 7.7.2011 in view of the decision of the Larger Bench made in K.Marappan vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle. In view of the liberty granted by this Court in W.P.No.20279 of 2009, dated 7.7.2011, again the petitioner raised a dispute under Sec.90 of the said Act in ARC No.1/2011-2012 before the second respondent. The second respondent by award, dated 27.3.2012 held that the last renewal of the loan made by the petitioner as on 1.1.2001 should be taken as the date for calculation of the dues outstanding and not from 27.3.1993 when the loan was first availed of. Again, the petitioner filed a statutory appeal in C.M.A.(CS) No.5 of 2012 before the tribunal. The tribunal also confirmed the order passed by the second respondent.

5 The learned counsel for the first respondent would submit that first respondent has offered concession as per the Government order in G.O.(2D) No.77, dated 22.7.2009 and to that effect the first respondent filed written statement by stating that as per the said G.O., concession given to those who paid 25% of the outstanding due amount on or before 31.10.2009 and the remaining 75% of the due amount is paid within three months in three instalments, the interest will be reduced to 6% from 12% p.a. The respondent correctly followed the norms set out by

the Government order and worked out the principal and 6% interest payable thereon as on 1.3.2001. On the basis of the said written statement, the award has been passed and the same was confirmed by the tribunal. Therefore, the orders passed by the tribunal does not warrants interference of this Court.

6 The learned counsel for the petitioner has fairly conceded that the concession made by the first respondent be accepted and there is no warrants to modify or set aside the order of the tribunal.

7 In the light of the above legal position as well as the submission made by the counsel for the parties, the writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS V)
Dated: 19.07.2017

*** Amended as per order dated 04.10.2018**
made in W.M.P. 1717 of 2018
in W.P.No.19422 of 2014.
sd/- Assistant Registrar(CS IV)
Dated: 24.10.2018.

/true copy/

Sub Asst.Registrar

vaan

To
The Deputy Registrar of
Co-operative Societies,
Attur Circle, Attur Town,
Salem District.

To be substituted to the order copy already despatched on 08.08.2017

+1cc to Ms.Zeenath Begum,Advocate sr.47604

+1cc to Mr.K.Rajasekaran,Advocate sr.47856

+1cc to Government Pleader sr.48088

W.P.No.19422 of 2014

SS(20/7/2017)
SP(24/10/2018)