

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.7.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No.22569 of 2009
and M.P.No.1 of 2009

M.ANNADURAI
S/O.MURUGESAN,
NORTH STREET KANGUZHI AYYUR POST,
UDAYARPALAYAM TALUK,
PERAMBALUR DISTRICT. ... PETITIONER

Vs.

THE DEPUTY REGISTRAR OF
CO-OPERATIVE SOCIETIES ARIYALUR CIRCLE
ARIYALUR ARIYALUR DISTRICT. ... RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the respondent in his proceedings C.E.P.No.59/2009-2010 dated 23.10.2009 and quash the same.

For Petitioner : Mr.C.Prakasam
For Respondent : Ms. T. Girija
Government Advocate

O R D E R

The learned counsel for the petitioner would submit that the impugned conditional attachment order has been passed in C.E.P.No.59/2009-2010, dated 23.10.2009 under Rule 167 of the Tamilnadu Cooperative Societies Act, 1983, for furnishing security to satisfy the decree passed in Arbitration Case No.358/2009-2010, dated 23.10.2009. Both the orders have been passed on the same day, without giving an opportunity to the petitioner. Thus, the impugned order passed by the respondent is liable to be dismissed.

2 The learned Government Advocate would submit that the petitioner has not furnished security for the award amount and therefore, on the same day, the impugned order has been passed by the respondent. The learned Government Advocate also relied

on the decision of this Court in E.MURUGAN AND ORS VS. THE REGISTRAR OF CO-OPERATIVE SOCIETIES AND ORS [W.P.No.11143 to 11146 of 2015 dt.17.4.2015]. Following the aforesaid order, this Court has passed an order in W.P.No.38843 and 38844 of 2015, dated 10.12.2015. The relevant portion of the order is extracted hereunder:

"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.

" It cannot be disputed by the respondents that the legal issue involved in these writ petitions is squarely covered by the order passed by this Court in W.P.Nos.11143 to 11146 of 2015, referred to above.

Following the aforesaid judgment, this Court in W.P. Nos. 38843 & 38844 of 2015, by its order dated 10.12.2015, has set aside the

impugned order and the matter was remitted back to the 2nd respondent therein, 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.''

3 It is seen from the impugned order that the impugned notice has been issued on 23.10.2009 for furnishing security. On the same day, the respondent passed the impugned conditional attachment order. Therefore, the respondent has not followed the procedure contemplated under the Tamilnadu Cooperative Societies Act.

4 In the light of the judgment cited supra, the impugned order, dated 23.10.2009 passed by the respondent is set aside. However, liberty is granted to the petitioner to make fresh representation to the respondent if so advised, within a period of two weeks from the date of receipt of copy of this order and the same shall be considered in accordance with Section 167 read with Section 140 of Tamil Nadu Co-operative Societies Act. The said exercise shall be completed by the respondent within a period of 12 weeks from the date of receipt of the petitioner's representation. It is made clear that the petitioner shall not alienate or encumber or create third party right in respect of the petitioner's immovable property.

The writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Deputy Registrar of Co-operative societies, Ariyalur circle
Ariyalur, Ariyalur district.
+1 CC to Mr.C. Prakasam, advocate sr 52802.

W.P.No.22569 of 2009
and M.P.No.1 of 2009

SP(10/08/2017)