

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2017

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THE HONOURABLE Mr. JUSTICE D.KRISHNAKUMAR

W.P.No.5865 of 2015
and MP.No.1 of 2015

P.Manishankar

.. Petitioner

Vs

1. The Deputy Registrar of Co-op. Societies,
Virudhachalam Circle, Virudhachalam,
Cuddalore District.
 2. The President,
M.Agaram Primary Agricultural Co-op. Credit Society,
M.Agaram Village & Post,
Virudhachalam Taluk,
Cuddalore District.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in Form-9, dated 20.01.2015 and quash the same.

For Petitioner : Mrs.Hemalatha
for Mr.C.Prakasam

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader

ORDER

The petitioner has filed this Writ Petition praying to quash the impugned order dated 20.01.2015 passed by the first respondent in Form-9.

2. The case of the petitioner is that his mother had mortgaged the property in the year 2000 and obtained a loan to the tune of Rs.4,90,000/- and thereafter defaulted in making the payment. The petitioner was stated to be minor at that time. The second respondent on instructions obtained a decree from the first respondent vide notice dated 20.01.2015 in Form-9, that the property of the petitioner would be brought to sale through public auction on 05.03.2015. Challenging the said notice, the

petitioner is before this Court in this Writ Petition.

3. It was brought to the notice of this Court on 04.03.2015, that the total amount due and payable by the petitioner is Rs.19,08,699/- as on that date. The learned counsel for the petitioner on instructions submitted that the petitioner is willing to pay a sum of Rs.2,00,000/- at first instance on 05.03.2015 and thereafter, Rs.8,00,000/- and Rs.9,08,699/- on 11.03.2015 and 08.4.2015 respectively.

4. The petitioner also filed an application in MP.No.2 of 2015 in WP.5865 of 2015, seeking to stay the proceedings of the impugned order dated 20.01.2015. This Court, vide its order dated 04.03.2015 has granted interim stay on condition that the petitioner shall pay a sum of Rs.2,00,000/- on 05.03.2015 before 10.00 a.m. before the second respondent, and the matter was subsequently adjourned to 12.03.2015. On 12.03.2015, when the matter was called, it was brought to the notice of the Court that the petitioner had paid a sum of Rs.2,00,000/- on 05.3.2015, but however had not complied with the payment of Rs.8,00,000/- that was to be paid on 11.03.2017, as agreed by the petitioner. Hence, this Court vide order dated 12.03.2015 has vacated the interim order granted to the petitioner. Challenging the dismissal of interim order in MP.No.2 of 2015 in WP.No.5865 of 2015, the petitioner has filed an appeal in W.A.No.584 of 2015 before the Division Bench of this Court.

5. The Division Bench of this Court vide order dated 09.04.2015, declined to entertain the appeal by relying on the paragraph No.4 of the order passed in MP.No.2 of 2015 in WP.No.5865 of 2015, which reads as under :

"4. The learned counsel for the petitioner submitted that the petitioner is willing to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) before 10.00 a.m. tomorrow, i.e., 05.03.2015, i.e., before the commencement of auction and that the petitioner would also pay another sum of Rs.8,00,000/- (Rupees Eight Lakhs only) on or before 11.03.2015 and shall also pay the balance amount of Rs.9,08,699/- (Rupees Nine lakhs eight thousand six hundred ninety nine only) on or before 08.04.2015."

In continuation of the said order passed by the Division Bench, it is relevant to extract the following paragraphs :

"3. We are thus of the opinion that in any case, in view of there being an offer to pay and the

Court having agreed to the same, there can not be breach of the same without justifiable cause. Other than saying the appellant is unable to pay, as recorded in the subsequent order, nothing else is stated. There is no reason to interfere with the impugned order.

4. The writ petition stand dismissed. No costs.

6. In view of the reasons given by the Division Bench of this Court in W.A.No.584 of 2015, no further order is required in the present Writ Petition.

7. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1. The Deputy Registrar of Co-op. Societies,
Virudhachalam Circle, Virudhachalam,
Cuddalore District.
2. The President,
M.Agaram Primary Agricultural Co-op. Credit Society,
M.Agaram Village & Post,
Virudhachalam Taluk,
Cuddalore District.

+lcc to Mr.C.Prakasam, Advocate, S.R.No.17831

+lcc to Mr.L.T.Shanmuga sundaram, Advocate, S.R.No.17640

+lcc to the Government Pleader, S.R.No.17728

W.P.No.5865 of 2015

pa(co)
rmp(05/05/17)