

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

The Hon'ble Mr. Justice D.Krishnakumar

WP No.7930 of 2015

and

M.P.No.1 of 2015

1. The Special Officer (Now the President)
K-445, Kothamangalam Primary Agricultural
Co-operative Bank Ltd.,
Kothamangalam, Kothamangalam (Post)
Sathyamangalam Taluk,
Erode District.

2. The Deputy Registrar of
Co-operative Societies,
Pudhupalayam Post,
Gobichettipalayam.

Petitioners

Vs.

1. Tmt. A. Rajinamary

2. The Presiding Officer,
Principal District and Sessions Judge,
Erode.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent, in his proceeding, in Cooperative Principal District Judge/Cooperative Tribunal, Erode, dated 31.03.2011, in CMA.No.55 of 1999, and to quash the same, and consequently, to permit the petitioners to proceed with the recovery and the loss sustained to the Society.

For Petitioners : Mr. L. P. Shanmugasundaram

For Respondent-1 : Mr. S.Umapathy

For Respondent-2 : Court

ORDER

Heard Mr. L. P. Shanmugasundaram, the learned counsel appearing for the petitioners and Mr. S.Umapathy, the learned counsel for the first respondent.

2. Aggrieved by the surcharge order passed by the Deputy Registrar of Co-operative Societies/second petitioner, dated 27.01.2009, the first respondent has preferred an Appeal before

the Cooperative Tribunal, in Civil Miscellaneous Appeal No.55 of 2009, and the Cooperative Tribunal, by a judgment, dated 31.03.2011, allowed the Appeal, and set aside the surcharge order passed by the Deputy Registrar of Co-operative Societies and remanded the matter to him (Deputy Registrar of Co-operative Societies) for fresh consideration. Challenging the said judgment, the present Writ Petition has been filed by the petitioner/Society.

3. The learned counsel appearing for the petitioner/Society submits that the judgment passed by the Cooperative Tribunal is unsustainable in law, for the reason that, when a similar issue came up for consideration before the Tribunal, in an Appeal filed by the employees of the same Cooperative Society, the Cooperative Tribunal has dismissed the Appeal, whereas, the Appeal filed by the first respondent/employee was allowed by setting aside the surcharge proceedings. In fact, challenging the said dismissal, the employees of the Cooperative Society filed Writ Petitions before this Court, viz., W.P.Nos.33768, 33769 of 2013, etc., (batch) and this Court, by a common order, dated 01.04.2016, dismissed the Writ Petitions, and confirmed the judgement passed by the Cooperative Tribunal and when the matter went on Appeal before the Hon'ble First Bench, in W.A.Nos.1281, 1207 and 1140 of 2016, the Hon'ble First Bench affirmed the order passed by the learned Single Judge and dismissed the Writ Appeals, by judgment, dated 17.11.2016. It is, therefore, submitted that, there cannot be two conflicting judgments in respect of a similar issue.

4. In reply to the above submission, the learned counsel for the first respondent submitted that by the impugned judgment, the Cooperative Tribunal has remanded the matter to the second petitioner/Deputy Registrar of Cooperative Societies for fresh consideration, and directed him to grant an opportunity to the parties to examine the witnesses and to mark documents and thereafter, to pass fresh orders. Therefore, the learned counsel prays that, an opportunity may be granted to the first respondent to putforth their case by examining the witnesses and marking supportive documents.

5. It is evident that while allowing the Appeal, the Cooperative Tribunal has only remanded the matter to the Society for fresh consideration and no adjudication was made on merits. Therefore, I decline to interfere with the Judgment passed by the Cooperative Tribunal, which is impugned in this Writ Petition. The Deputy Registrar of Cooperative Society is directed to take up the matter for fresh disposal and after affording opportunity to the parties concerned, shall pass fresh orders on merits and in accordance with law as expeditiously as

possible.

6. With the above observation, the Writ Petition is disposed of. There shall be no order, as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sd
To

1 The Presiding Officer,
Principal District and Sessions Judge,
Erode.

2 The Deputy Registrar of
Co-operative Societies,
Pudhupalayam Post,
Gobichettipalayam.

+ 1 cc to MR. L.P. Shanmugasundaram, Advocate SR.62685
+ 1 cc to Mr. S. Umapathy, Advocate Sr.62703
+ 1 cc to the Government Pleader Sr.63350

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BR(CO)
EU(21/11/2017)

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