

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No.3261 of 2012 and
M.P.No.1 of 2012

1.R.Loganathan
2.Kannammal

...Petitioners

versus

1.The Deputy Registrar/
Chief Recovery Officer/Arbitrator,
Erode District Central Cooperative Bank Ltd.,
Having office at Bhavani Main Road,
Opp to VOC Park, Erode - 638 003, Erode District.

2.The Secretary of K.1161
Elavamalai Primary Agricultural Cooperative
Bank Ltd., Kalingaraiyanpalayam Pudur,
Bhavani - 638 301
Erode District.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 5.8.2009 made in CMA No.13 of 2008 on the file of the Principal District Court, Erode, confirming the Award in ARC No.4730/2003-2004 dated 07.12.2007 passed by the 1st respondent herein.

For Petitioners : Mr.N.Manokaran

For Respondent 1 : No appearance

For Respondent 2 : Mr.K.Rajendran

ORDER

The petitioners availed financial assistance from K.1161, Elavamalai Primary Agricultural Cooperative Bank Limited. Since the loan amount was not repaid in accordance with the schedule of payment, the Bank initiated proceedings. The matter was referred to the Deputy Registrar. The Deputy Registrar passed an Award dated 7 December, 2007 determining the amount payable by the petitioners. The Award was not supported by reasons. The petitioners, therefore, filed a statutory appeal before the Principal District Court, Erode. The Civil Miscellaneous Appeal was dismissed by the learned Principal District Judge. Feeling aggrieved, the petitioners are before this Court.

2. The learned counsel for the petitioners contended that several contentions were taken by the petitioners in their statement filed before the Arbitrator. However, the Arbitrator failed to pass an Award with reasons. According to the learned counsel, the printed format of the Award was just filled up by the Arbitrator and the same was characterised as an Award. The learned counsel further contended that even the learned Principal District Judge failed to take note of the Award passed by the Arbitrator without supplementing reasons. The judgment

is therefore bad in law.

3. The learned counsel for the second respondent supported the Award passed by the Arbitrator as well as the judgment in C.M.A.No.13 of 2008.

4. The Award passed by the Arbitrator dated 7 December, 2007 indicates that the statement given by the second respondent alone was taken as the basis to pass the Award. The Arbitrator was required to pass an Award in accordance with Rule 107 of the Tamil Nadu Cooperative Societies Rules. It is not sufficient by filling up the blanks in an already prepared format. The Arbitrator was deciding a *lis* between two parties. He was expected to consider the claim made by the Bank as well as the borrowers and pass an Award on merits. The Award passed by the Arbitrator does not contain any reason much less justifiable reason. When the matter was taken up before the Appellate Court, the learned Principal District Judge, without considering the specific contentions raised by the petitioners dismissed the statutory appeal.

5. The Award passed by the Arbitrator does not contain any material as to whether witnesses were examined and documents were marked. The statement of accounts alone cannot be the basis to pass an

Award in a contested matter. The petitioners should be given liberty to cross examine the bank officials at least with regard to the correctness of the accounts produced by the Bank. Since the Award and the judgment does not contain any discussion on merits, I am of the view that the matter requires fresh consideration.

6. In the result, the judgment dated 5 August, 2009 in CMA.No.13 of 2008 confirming the Award dated 7 December, 2007 is set aside. The matter is remitted to the Arbitrator for fresh consideration.

7. The Arbitrator is directed to issue notice to the petitioners and the second respondent and decide the matter on merits and as per law. The Award passed by the Arbitrator should contain reasons taking into account the contentions taken by the petitioners. The question of recovery of the loan amount would abide by the decision to be taken by the Arbitrator.

8. In the up shot, I allow the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2017

svki

To

The Principal District Court, Erode,

K.K.SASIDHARAN, J.

(svki)

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