

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.3421 of 2012

M.P.No.1 of 2012

1.Mohammed Rafi
2.Yaseen
3.Ameena Begum @ Ameena
4.Minor Mubarak
5.Minor Zeenath Mariam Bi Bi .. Petitioners

Minor petitioners 4 & 5 rep. By
father and natural guardian Mohammed Rafi

Vs.

1.The Salem Co-operative Housing Society Ltd.,
S.No.1329, Salem Rep. By its Secretary
D.No.165, Cherry Road,
Salem.

2.The District Registrar of Co-operative
Societies (Housing)
Salem Region
Salem.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.07.2011 made in I.A.No.33 of 2010 in unnumbered C.M.A.(C.S.).No. Nil Of 2010 – on the file of the Principal District Court, Salem.

For Petitioners : Mr.Zeenath Begum

For R1 : Mr.P.Jagadeesan

For R2 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 11.07.2011 made in I.A.No.33 of 2010 in unnumbered C.M.A.(C.S.).No.---of 2010 - on the file of the Principal District Court, Salem.

2. The petitioners are respondents in A.R.C No.935 of 2000 - 2001. The Arbitrator passed an award dated 20.08.2003, directing the petitioners to pay a sum of Rs.1,24,536/- with subsequent interest. Challenging the said award, the petitioners filed appeal in the said A.R.C. The petitioners also filed I.A.No.33 of 2010 to condone the delay of 2434 days in filing the appeal. According to the petitioners, no notice was served on the petitioners by the Arbitrator in A.R.C proceedings. The respondents 3 to 5 are minors. At that time, without serving notice, an exparte award was passed. They came to know about the exparte award only on 31.05.2010, when the first respondent affixed the sale notice on 15.06.2010 on

the petitioners door. The petitioners filed appeal on 21.06.2010 along with the present I.A to condone the delay in filing the appeal

3. The second respondent remained exparte.

4. The first respondent filed counter affidavit and denied all the averments in the affidavit and submitted that in the year 2005, when the notice of public auction was issued, the petitioners 1 and 2 made a part payment by the letter dated 26.03.2005 and requested for the adjournment of the sale. At their request, the sale was adjourned on many occasions. The petitioners were aware of the award dated 20.08.2003 in the year 2005 itself and it is not correct to state that petitioners came to know about the award only on 15.06.2010 and prayed for dismissal of the application.

5. Before the learned Judge, the petitioners did not let in any oral and documentary evidence. The first respondent marked a letter dated 26.03.2005 given by the petitioners 1 and 2 as Ex.R1. The learned Judge, considering the averments in the affidavit, counter affidavit, materials on record and Ex.R1, the letter dated 26.03.2005, dismissed the application to condone the delay in filing the appeal.

6. Against the said order dated 11.07.2011 made in I.A.No.33 of 2010 in unnumbered C.M.A.(C.S.).No.---- of 2010, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel appearing for the petitioners as well as the first respondent and perused the materials available on record.

8. The contention of the learned counsel appearing for the petitioners is that by making part payment, the petitioners have not admitted their liability for the award and the learned Judge, erred in dismissing the application on the basis of the Ex.R1. The said contention is without any merits. The issue is not whether the petitioners have admitted their liability in the award. On the other hand, the issue is whether the petitioners came to know about the exparte award only on 15.06.2010 or they had knowledge of the award earlier. The petitioners contention is that they came to know about the award only on 15.06.2010. This contention is disproved by the first respondent by marking Ex.R1, the letter dated 26.03.2005 by the petitioners 1 and 2. By Ex.R1, the petitioners 1

and 2 made part payment and sought for adjournment of the auction sale. This shows that the petitioners were aware of the award on 26.03.2005 itself. In view of the above reason, the Civil Revision Petition is liable to be dismissed

9. Accordingly the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.09.2017

Index: Yes/No
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To

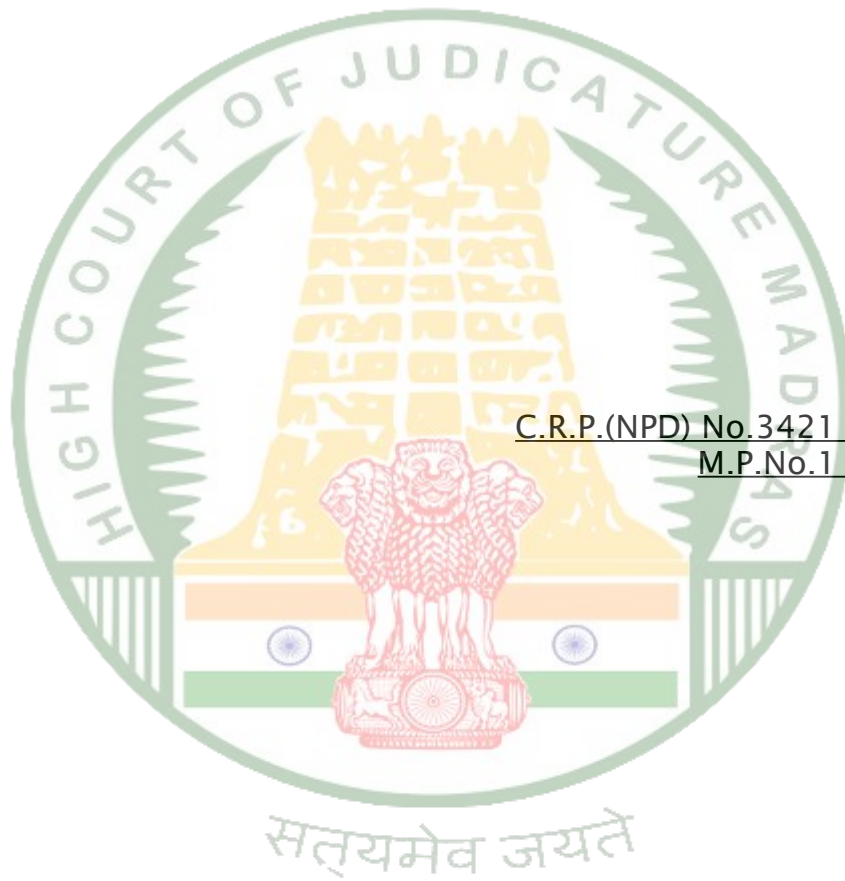
1.The Secretary,
The Salem Co-operative Housing Society Ltd.,
S.No.1329, Salem
D.No.165, Cherry Road,
Salem.

2.The District Registrar of Co-operative
Societies (Housing)
Salem Region
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3.The Judge,
The Principal District Court,
Salem.

V.M.VELUMANI,J.

gsa



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