

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.24920 to 24922 of 2016

and

W.M.P.Nos.21293, 21294, 21295 and 21296 of 2016

The C.H.38, Mookanur Sowdambigai
Handloom Weavers Co-operative Society,
Represented by Official Liquidator/
Handloom Officer (Statutory)
Office of the Assistant Director of Handlooms
and Textiles, No.23, Bharathi Park,
2nd cross street, Saibaba Colony,
Coimbatore-641 011. ... Petitioner in all the
above W.Ps

...Versus...

1. The Co-operative Tribunal
Principal District Judge,
Coimbatore District.
2. The Arbitrator/Assistant Director
of Handloom and Textiles,
No.23, Bharathi Park, 2nd Cross Street,
Saibaba Colony, Coimbatore - 641 011. ...1st and 2nd
respondents in all the
above three W.Ps.

3.Tmt.Sathyavani Muthu ... 3rd Respondent in W.P.No.24920
of 2016

4.R.N.Chandrasekaran ... 3rd Respondent in W.P.No.24921
of 2016

5.Tmt.Sayammal ... 3rd Respondent in W.P.No.24922
of 2016

Prayer in W.P.No.24920 of 2016:-Writ petition filed under
Article 226 of the Constitution of India praying for the
issuance of a Writ of Certiorari, calling for the records
pertaining to the Judgment and Decree dated 05.02.2016 made in

Co-operative Civil Miscellaneous Appeal (CMA) No.35 of 2010 on the file of the 1st respondent and quash the same.

Prayer in W.P.No.24921 of 2016:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the Judgment and Decree dated 05.02.2016 made in Co-operative Civil Miscellaneous Appeal (CMA) No.37 of 2010 on the file of the 1st respondent and quash the same.

Prayer in W.P.No.24922 of 2016:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the Judgment and Decree dated 05.02.2016 made in Co-operative Civil Miscellaneous Appeal (CMA) No.39 of 2010 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.D.Venkatachalam in all W.Ps.
R1 : Tribunal in all W.Ps
For R2 : Mr.V.Selvaraj, AGP in both W.Ps
(W.P.Nos24920 and 24922 of 2016)
For R2 : Mrs.T.Girija, GA
(W.P.No.24921 of 2016)
For R3 : No appearance in all W.Ps

C O M M O N O R D E R

The petitioner, in the above writ petitions, seeks issuance of a Writ of Certiorari, calling for the records pertaining to the Judgment and Decree dated 05.02.2016 made in Co-operative Civil Miscellaneous Appeal (CMA) Nos.35, 37 and 39 of 2010 on the file of the 1st respondent and quash the same.

2. The brief facts of this case is as follows:-

The third respondent in W.P.No.24921 of 2016 was elected as President of the society, who is none else than the husband of the 3rd respondent in W.P.No.24920 of 2016 and son of the 3rd respondent in W.P.No.24922 of 2016. Third respondents in W.P.No.24920 and 24922 of 2016 and the members of the society. With regard to the allegation of stock deficit (finished goods/saris) of 6680 Nos., worth about Rs.27,22,781.20 paise occurred during the years 1999 and 2000, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act,1983 (hereinafter called the "said Act" for short) was ordered and on completion of the enquiry, the Enquiry Officer submitted a report dated 01.12.2000. Based on Section 81 Enquiry Report, the society filed a claim petition under Section 90 of the Act before the Arbitrator/Assistant Director of Handlooms,

Coimbatore, the second respondent herein. The Arbitrator/second respondent herein passed an award in Dispute No.1/2000, dated 31.05.2004 under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 read with Rule 107 of Tamil Nadu Co-operative Societies Rules, 1984, directing the third respondents in the above Writ Petitions to pay the sum of Rs.27,22,781.20/- and future interest at the rate of 12 1/2% per annum till the date of realization of the amount. As against the aforesaid award passed against the third respondents herein, they filed an appeal in C.M.A.No.116 of 2004 before the tribunal. By Judgment dated 28.04.2008, the tribunal set aside the award dated 31.05.2004 and remanded back the matter to the Arbitrator/second respondent herein for fresh Arbitral proceedings after giving opportunity to both the parties to let in evidence and cross examine the witnesses and dispose of the matter, in accordance with law within a period of two months. Pursuant to the above said order, the second respondent again passed award against the third respondents dated 19.02.2010. Challenging the award dated 19.02.2010, the third respondents, once again filed appeals in C.M.A.Nos.35, 37 and 39 of 2010 before the tribunal under Section 152 of the Tamil Nadu Co-operative Societies Act.

3. After considering the submissions of both the parties, the tribunal by common order dated 05.02.2016 set aside the award passed by the second respondent/Arbitrator dated 19.02.2010 and allowed the appeals. Challenging the said common order dated 05.02.2016, passed by the tribunal in C.M.A.Nos.35, 37 and 39 of 2010, the petitioner's society has filed the Writ Petitions before this Court.

4. It is seen from the common order passed in CMA.Nos.35, 37 and 39 of 2010 dated 05.02.2016, that on 04.02.2010, the statements made by the third respondents herein was recorded, and thereafter on 11.02.2010, the second respondent/Arbitrator examined one Selvaraj, who is a staff of the petitioner's society and then only, the official liquidator was examined by the second respondent and one Jeyaraj Daniel, Secretary of the petitioner's society was also examined by the second respondent. Therefore, the contention of the learned counsel for the petitioner that the examination and recording of the evidence of the third respondents herein in respect of the examination of the witnesses has not been carried out in accordance with the procedure as contemplated under the Act and hence, the order passed by the second respondent/Arbitrator is in violation of the procedures contemplated in the law.

5. The learned counsel for the petitioner/society would further submit that the Tribunal ought not to have allowed the appeals filed by the third respondents herein in respect of charges of irregularities committed by them, by which, the

society has sustained a loss to the tune of Rs.27,22,781.20/-. Hence, for the procedural irregularities, the third respondents are not entitled for any relief and hence, the common order dated 05.02.2016 passed by the Tribunal is liable to be set aside.

6. Heard the learned counsel for the petitioner, learned Additional Government Pleader and the learned Government Advocate appearing for the 2nd respondent/Arbitrator. In spite of the notice served on the 3rd respondents, none appeared on behalf of them.

7. The third respondents, who are the appellants in C.M.A.Nos.35, 37 and 39 of 2010, have raised grounds that the statements of management witnesses were recorded in the absence of the third respondents herein/appellants and therefore the said action of the Arbitrator shows biased and partisan attitude of Arbitrator and violating the principles of natural justice. The other legal point raised by the third respondents/appellants is that the third respondents are not members of the society. The next legal point raised in the grounds is that, the third respondents are neither members nor past members or servants or past servants of the society or persons claiming through a member or heirs or legal representatives of any deceased member and as such, no proceedings under Section 90 of the said Act will lie against them.

8. On the basis of the above said grounds, the Tribunal has framed the following issues:-

(i) Whether the award passed by the second respondent is valid?

(ii) To what other relief, the appellants are entitled to ?

9. I have perused the order passed by the tribunal, wherein, in paragraph No.16, the Tribunal relied upon Section 107 of the Tamil Nadu Co-operative Societies Act, 1988 and other provisions of the Act. It is pertinent to note that the tribunal concluded that the second respondent has not followed the procedures as contemplated under the law.

10. The Tribunal, while considering the case of the third respondents in W.P.No.24920 and 24922 of 2016, namely Tmt.Sathyavani Muthu and Tmt.Sayammal, held that they were not the members of the society at the relevant point of time. Hence, the Tribunal allowed the appeals in favour of the third respondents in W.P.Nos.24920 and 24922 of 2016 filed by the aforesaid Sathyavani Muthu and Sayammal. Insofar, the other grounds regarding the procedural irregularity in conducting an enquiry are concerned, the third respondents have not raised the

ground in their appeal before the 1st respondent-Tribunal. The tribunal after considering all the aspects, held that the second respondent/Arbitrator has not followed the procedures as contemplated under the provisions of law and therefore, there is violation of procedure in conducting the enquiry. It is also held that the second respondent ought to have conducted enquiry under Section 90 of the Act after taking action under Section 81 and thereafter, under Section 87(4) of the Act. Thus, the Tribunal held that without following the said procedures, enquiry was conducted. Therefore, the tribunal has come to the conclusion that there was procedural irregularity in conducting the enquiry by the second respondent/Arbitrator and hence, the order passed by the Arbitrator dated 19.02.2010 is liable to be set aside. Accordingly, the Tribunal, by pointing out the above flaws, allowed the appeals filed by the third respondents herein.

11. The learned counsel for the petitioner would submit that allowing the appeal in favour of the third respondents namely Sathyavani Muthu and Sayammal on the ground that they are not the members of the society is strenuously disapproved and stated that the third respondents namely Sathyavani Muthu and Sayammal are past members in the society and the aforesaid contention was not taken into consideration while allowing the appeal by the Tribunal.

12. The learned counsel for the petitioner further contended that the other finding given by the Tribunal regarding procedural irregularities is concerned, the said ground has not been taken by the appellants/third respondents herein in their appeal and therefore there is infirmity in the order passed by the tribunal.

13. On a perusal of the order passed by the tribunal, as rightly pointed out by the learned counsel for the petitioner, the Tribunal has not considered the fact that the third respondents in W.P.Nos.24920 and 24922 of 2016 namely Sathyavani Muthu and others were Ex-members of the society. However, it is for the petitioner to establish the fact that the aforesaid third respondents are past members of the society and the dispute raised in the matter is covered under Section 19 of the Tamil Nadu Co-operative Society Act.

14. In view of the above said facts, the tribunal has considered the case of the third respondents and allowed the appeals filed by them. The petitioner's society has not raised the issue before the second respondent that the third respondents herein are the members of the society. Therefore an opportunity is to be given to the petitioner's society to let in evidence and to produce necessary documents before the

authorities concerned and establish the fact that the third respondents are the members of the society.

15. As far as the other finding of the tribunal that there are procedural irregularities in conducting the enquiry is concerned, the procedural violation would vitiate the entire proceedings. As rightly contended by the learned counsel for the petitioner even according to the tribunal, there is a flaw in the procedures followed during the conduct of enquiry. Therefore, on such ground, the entire proceedings does not stand merit and therefore, the matter has be remanded back to the second respondent to conduct de novo enquiry after providing sufficient opportunity to the parties concerned.

16. Therefore, in the light of the aforesaid findings of this court, to meet the ends of justice, this court has no hesitation to set aside the order passed by the tribunal. Accordingly, the order passed by the tribunal dated 05.02.2016 made in CMA.Nos.35, 37 and 39 of 2010 are remanded back to the second respondent with a direction to decide the issue afresh and in accordance with law as expeditiously as possible after providing due opportunity to the parties concerned.

17. In the result, the Writ Petitions are partly allowed on the above terms. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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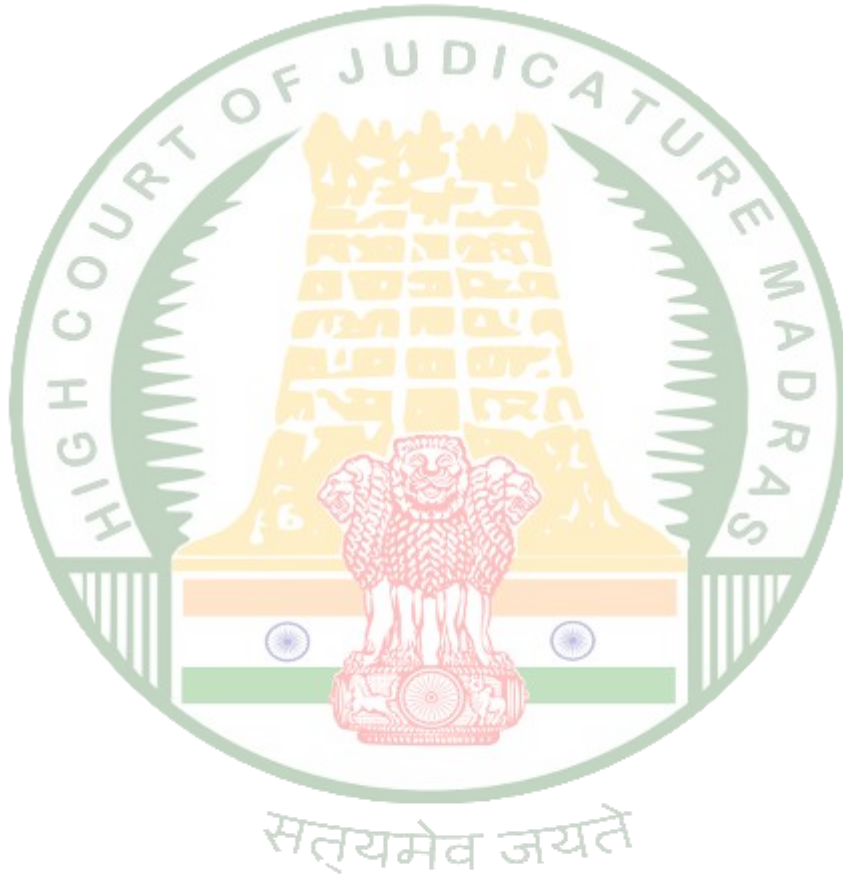
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+2ccs to Mr.D.Venkatachalam, Advocate Sr. 23317 & 23318

+1cc to the Government Pleader, Sr. 24080

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KK (CO)
VR (22/06/2017)



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