IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.26463 of 2013 and
MP.Nos.2 to 3 of 2013

K.Kalaiselvam

..Petitioner

Vs.

1. The Commander Works Engineer,
   Military Engineering Service,
   Pallavan Salai,
   Chennai-2

2. The Garrison Engineer,
   St.Thomas Mount,
   Chennai-600 016.

3. The President,
   Defence Employees Cooperative
     Thrift & Credit Society,
   Fort St.George,
   Chennai-9.

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a certiorarified mandamus after calling for all the records pertaining to the passing of the order dated 03.09.2013 in office order No.132 on the file of the second respondent and quash the same and consequently direct the second respondent not to effect any recovery from petitioner's salary for the time barred debt due to the third respondent society.

For Petitioner : Mr.G.Justin
For Respondents: Mr.T.L.Thirumalaisamy for R1 & R2

: M/s.P.Rajalakshmi for R3

ORDER:

According to the petitioner, the petitioner is working under the second respondent and availed a loan for a sum of

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Rs.1,00,000/- from the Defence Employees Cooperative Thrift & Credit Society on 20.04.2001. The EMI's were recovered from the petitioner's salary till December 2003 and thereafter no recovery was made, since the said society has become defunct. Pursuant to the election of the new board of directors of the society, the second respondent passed an order dated 03.09.2013 stating that a minimum amount of Rs.2,000/- would be recovered from the salary of the workers from September 2013 onwards. Challenging the said order, the petitioner has filed the present writ petition before this Court.

2. According to the learned counsel for the petitioner, the EMI's were not recovered for the past 10 years. Further, the respondents should have taken steps to initiate such proceedings within six years from the date on which the respondents failed to pay the debt. Hence, it is time barred as per Section 90 (9) (a) (ii) of the Tamil Nadu Cooperative Societies Act, 1983, which reads as follows:

> "save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), the period of limitation shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;"

3. The learned counsel appearing for the respondents 1 and 2 would oppose the contention of the petitioner and submit that the impugned order has been passed by the second respondent, in pursuant to the instructions on recovery of the said arrears of loan amount, received from the said society. The learned counsel would further submit that the said impugned order is of general instructions and it could not be meant as individual notice to the defaulters. Further, the contention of the petitioner that the recovery proceeding is 'barred by limitation' is not correct. The provision under Section 90 (9) (a) (ii) of the Tamil Nadu Cooperative Societies Act, 1983 would not apply to the facts of the present case. Therefore, the writ petition is liable to be dismissed.

4. In view of the submissions made by the learned counsel for the parties, the petitioner is challenging the impugned communication issued by the second respondent, which is merely a general instruction and not an individual order under the provisions of the Act. The petitioner has not explained the reasons for challenging the order. If any order passed for recovery under the law, the petitioner has right to agitate before appropriate forum in the manner known to law. Further, as submitted by the learned counsel for the second respondent,

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no award has been passed under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 and therefore, the contention of the petitioner that it is barred by limitation under Section 90 of the said act is contrary to the provisions of law and the writ petition is liable to be rejected.

5. Therefore, this court is not inclined to quash the impugned order at this pre-mature stage. However, if the petitioner is having any grievance, he can approach before the concerned authority, if so advised. Liberty is also given to the respondents to proceed with the recovery proceedings in accordance with law as contemplated under the provisions of the Act.

6. The writ petition is dismissed with above observations. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To
1. The Commander Works Engineer,
Military Engineering Service,
Pallavan Salai,
Chennai-2

2. The Garrison Engineer,
St.Thomas Mount,
Chennai-600 016.

+1 CC to Mr.T.L. Thirumalaisamy, advocate sr 52363.
+1 Cc to Govt. Pleader sr 53011.

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GMI(CO)
sp(21/09/2017)

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