IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.2736 of 2013
and
MP.No.1 of 2013

K.Baskaran ..Petitioner

Vs.

1. The Deputy Registrar of Cooperative
Societies/Arbitrator,
Cuddalore

2. The Sale Officer,
The Cuddalore District Central
Cooperative Bank Limited,
Cuddalore-607 001

3. The Secretary / Special Officer,
The Cuddalore District Central
Cooperative Bank Limited,
Cuddalore-607 001. ..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, calling for the records and to quash the Award No.271/1997-1998 dated 03.08.1998 passed by the first respondent and confirmed by the appellate court (Principal District Judge), Cuddalore in CMA.8/2008 by judgment dated 29.11.2012 and consequently directing respondents 2 and 3 to return the machine and 2 motors seized and removed by them on 26.12.2012 or their value.

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For Petitioner : Mr.R.Gururaj

For Respondents : Mr.V.Selvaraj, Additional
Government Pleader for R1 & R2

: Mr.L.P.Shanmugasundaram,
Special Government Pleader for R3

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ORDER:

According to the petitioner, the petitioner borrowed a sum of Rs.1,96,000/- and Rs.1,20,000/- on 13.06.1995 and 08.08.1992 respectively from the third respondent for the manufacture of hollow blocs bricks after giving an immovable property as security. At first, the monthly instalments for the loan amounts were repaid properly. Later, the petitioner has not paid the EMI. Pursuant to the award passed against the petitioner on 03.08.1998, a distraint notice dated 26.12.2002, served on the petitioner by stating that the attachment over the petitioner's property would be effected on 26.12.2002. But the attachment was not done. Instead of that, the respondent forcibly removed the hollowblocs machine and two motors worth Rs.1.50 lakhs on 26.12.2002 from the petitioner's premises. Then, the petitioner issued a notice on 10.01.2003 calling upon the respondents to furnish a copy of the award and return the motors which was seized. No reply was received from the respondents, the petitioner filed a petition in W.P.No.6009 of 2003, this court by order dated 18.12.2007, directed the respondents to furnish a copy of the award. After receiving a copy of the award dated 03.08.1998 from the respondents, the petitioner preferred an appeal in C.M.A.No.8 of 2008. Pending the appeal, the said amount was discharged by one of the petitioner's family member. By order dated 29.11.2012, the said appeal was dismissed by the Tribunal, by recording the respondent's communication dated 22.12.2008 stating that the entire dues were cleared and to take back the attached materials. The petitioner sent a reply on 26.12.2008 stating that the machineries seized were kept unprotected, the same had been corroded and they were unfit even as scrap. Recording the statement that the proceedings are pending both in Civil Court and before the District Consumer Disputes Redressel Forum, Cuddalore, the award dated 03.08.1998 was confirmed in the above C.M.A. Hence, the petitioner has filed this writ petition before this court.

2. The learned counsel for the first and second respondents would submit that the findings of the appellate court would show that based on the respondent's communication dated 22.12.2008, which was received by the petitioner and the reply was also sent by the petitioner, the appellate court confirmed the said award. As the petitioner has challenged the said proceedings in the present writ petition without challenging the said communication dated 22.12.2008 sent by the respondent, the writ petition is liable to be dismissed.

3. In view of the submissions made by the learned counsel for the parties, on the aforesaid facts, it is clear that the award has been passed by the Deputy Registrar / the

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first respondent on 03.08.1998. Subsequently, the petitioner filed a writ petition in W.P.No.6009 of 2003 challenging the distraint notice in E.P.No.82 / 99-2000 and consequently directing the respondents to serve a copy of the award to the petitioner. By order dated 18.12.2007, this court directed to furnish the said copy to the petitioner within two weeks from the date of receipt of a copy of the Order. Pursuant to the same, the petitioner preferred an appeal in CMA.No.8 of 2008 challenging the impugned award dated 03.08.1998. In the said appeal, the petitioner has not challenged proceedings of the seizure and attachment of the said machineries. Pending the said appeal, one Jothi filed a compromise memo on discharge of loan amount and on the basis of the compromise memo, the appeal was dismissed. After the discharge of the said loan amount, the aforesaid Jothi filed a suit in O.S.No.84 of 2008 against the petitioner for the recovery of the discharged amount and the same is pending before the Sub Court, Cuddalore. Further, the petitioner has filed a petition before District Consumer Disputes Redressal Forum, Cuddalore and the claim of the petitioner was dismissed on 03.11.2010. Against the said order, the petitioner preferred an appeal before the State Consumer Disputes Redressal Commission, Chennai, which was also dismissed. The appeal was dismissed by the Tribunal for the reason that the respondent's communication dated 22.12.2008 stating that the entire due was cleared and the machineries could be taken back and the petitioner also replied to the same. Now, the contention of the petitioner is that the petitioner was not aware of the above communication dated 22.12.2008 and therefore he was not in a position to challenge the communication cannot be accepted. The petitioner has not challenged the aforesaid communication in the present writ petition. Even in the affidavit, the petitioner has not disclosed the fact that the petitioner's reply dated 26.12.2008 was sent to the respondent. Hence, the writ petition deserves to be dismissed.

4. Therefore, in the light of the above said facts and circumstances of the case, the writ petition deserves to be dismissed and the writ petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

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3. The Secretary / Special Officer,
   The Cuddalore District Central
   Cooperative Bank Limited,
   Cuddalore-607 001.

+1cc to Mr.R.Gururaj, Advocate, S.R.No.52101
+1cc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No.57191
+1cc to the Government Pleader, S.R.No.53006

W.P.No.2736 of 2013 and
MP.No.1 of 2013

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