

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
W.P. No.19591 of 2010
and
M.P. No.1 of 2010

K.Rajendran

.. Petitioner

Vs

The Co-operative Sub-Registrar,
Arbitration & Execution,
The Chennai Metropolitan Co-op,
Housing Society, Chennai -07.

.. Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondent to issue certified copy of award dated 07.03.2003 on the petition dated 20.08.2010.

For Petitioner : Mr.G.Appavu

For Respondent : Mr.Arumugam

O R D E R

This Writ Petition has been filed seeking to direct the respondent to issue certified copy of the award dated 07.03.2003 as requested by the petitioner on 20.08.2010.

2. Learned counsel for the petitioner submitted that the petitioner obtained a loan of Rs.3,00,000/- from the respondent society. According to the petitioner he has been repaying the installment amounts till May 2010 to a tune of Rs.5,89,405/-. Based on the summon received from the respondent to appear on 07.03.2003, the petitioner appeared before him. However, without hearing and considering his repayments, the respondent passed an award for Rs.6,13,237/-, on the same day. The said award was not communicated to the petitioner, as per the law laid down under Section 152(3) of the Tamil Nadu Co-operative Societies Act, 1983. The petitioner has also specifically stated in the affidavit that due to non-furnishing of the copy of the award, he was unable to file an appeal under Section 152 of the Act. Suddenly, the petitioner received an auction sale notice, threatening to sell the property on

26.08.2010 at 11 A.M. Therefore, without furnishing the certified copy of the award, the respondent has initiated the proceedings to sell the property. Hence, the petitioner has filed the present Writ Petition seeking the aforesaid prayer. On 25.08.2010 this Court granted an order of interim injunction.

3. Per contra, learned counsel appearing for the respondent would submit that the petitioner has filed the present Writ Petition without disclosing the correct facts. According to the respondent, the award was passed on 07.03.2003, and the same has been received by the petitioner on 06.08.2003. The said fact has been admitted by the petitioner in his letter dated 19.12.2003. The same was also marked as Ex.B2 before The City Civil Court in O.S. No.304 of 2011. It is also stated so, in the judgment and decree passed by the City Civil Court, Chennai. According to him, the petitioner has admitted that he has received the award copy. Therefore it is a clear case of suppression of material facts before this Court. Hence, the petitioner is not entitled to get any relief and the Writ Petition is liable to be dismissed.

4. Heard the rival submissions made by the parties and perused the material available on record.

5. On perusal of the affidavit filed in support of the Writ Petition, it is found that after enquiry, on the same day award has been passed by the respondent, but the certified copy of the award was not served on the petitioner. It is the submission of the petitioner that without serving the copy of the award the respondent has taken steps to sell the property. All these facts has been stated by the petitioner in the affidavit filed along with the present Writ Petition. But, as rightly pointed out by the learned counsel for the respondent, the petitioner himself has admitted in his letter dated 19.03.2003 and subsequently the said fact also been placed before the City Civil Court in O.S. No. 304 of 2011. Thus, it is made clear that the present Writ Petition has been filed without disclosing material facts.

6. In view of the above said submissions, the prayer in the writ petition has become infructuous. However, for non disclosure of the facts, this Court is inclined to impose cost on the petitioner. Hence, the Writ Petition is dismissed, with an exemplary cost of Rs.5,000/-, payable to the respondent Society, within a period of 12 weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition is dismissed.
Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rkp/avr

To

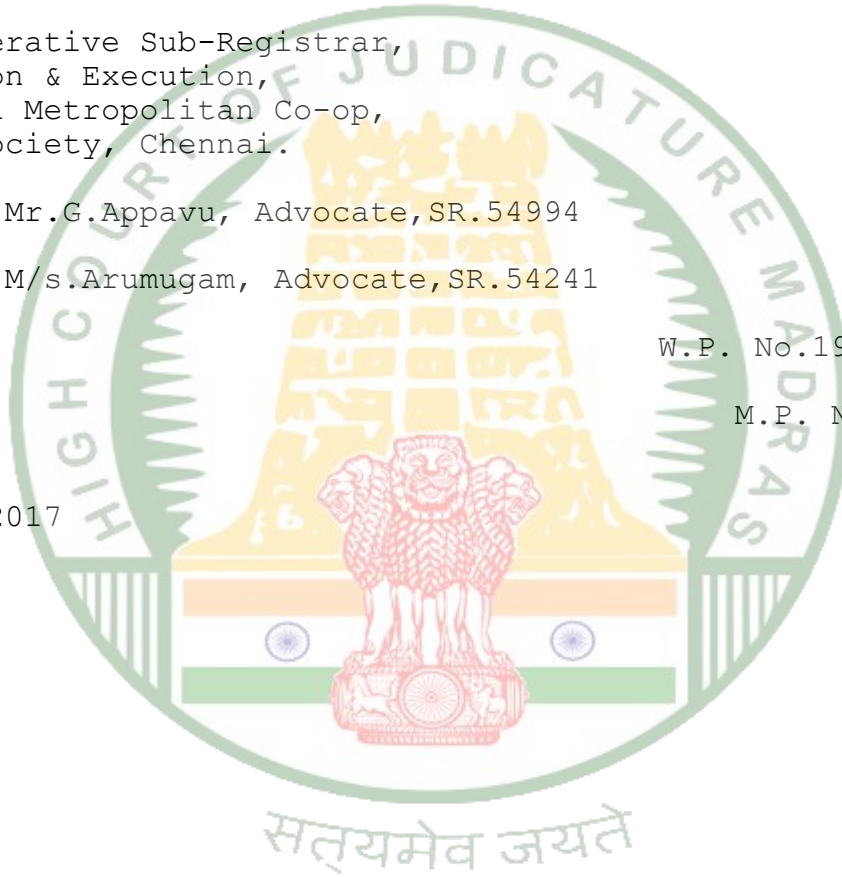
The Co-operative Sub-Registrar,
Arbitration & Execution,
The Chennai Metropolitan Co-op,
Housing Society, Chennai.

+ 1 cc to Mr.G.Appavu, Advocate,SR.54994

+ 1 cc to M/s.Arumugam, Advocate,SR.54241

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and
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MG (CO)
NR 18/09/2017



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