

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.5677 of 2017 and
WMP.No.6077 of 2017

The Kannampalayam Powerloom Weavers
Co-op Production and Sales Society Limited,
Represented by its Managing Director,
Kannampalayam Post, Sulur Via,
Coimbatore - 641 402.
..Petitioner

Vs.

1. The Cooperative Tribunal,
Principal District Judge,
Coimbatore District.
2. The Assistant Director,
of Handloom and Textiles,
No.23, Bharathi Park,
2nd Cross Street,
Saibaba Colony,
Coimbatore - 641 011.

3. S.Arusamy,

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records pertaining to the Judgment and Decree dated 16.12.2016 made in Cooperative Civil

Miscellaneous Appeal (CMA) No.24 of 2015 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.D.Venkatachalam

For Respondents : R1 - Tribunal

: Mrs.T.Girija,
Government Advocate for R2

: Ms.S.Nandhini Devi for R3

ORDER:

According to the petitioner society, the second respondent ordered an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 to enquire into the allegations of irregularities and misappropriation taken place in the petitioner society . Regarding the same, an enquiry was conducted and on the basis of the enquiry report, the second respondent initiated a surcharge proceedings under Section 87 of the Act and passed a surcharge order on 29.02.1996 against the third respondent herein/ the President of the petitioner Society for a sum of Rs.2,05,465/- with interest of 12 per cent per annum. Challenging the aforesaid surcharge order, the third respondent preferred an appeal in CMA.No.32 of 1996. The aforesaid appeal was dismissed by the Tribunal on 09.04.2001 as abated. Pursuant to the order, the third respondent on behalf of the society filed a suit in O.S.No.468 of 1994 against the Sampooranam Textiles and obtained a

decree dated 02.01.1997 for a sum of Rs.2,05,465/-. The said amount could not be recovered from the said Textiles. The third respondent retired from service on 30.06.2004. The petitioner society withheld the terminal benefits of the third respondent's who had been held responsible by the society for the award. While being so, the petitioner society filed an execution petition before the first respondent for executing the surcharge order dated 29.02.1996. The Tribunal, after considering the said application, appeal filed by the petitioner society has been dismissed on the ground that the Execution Petition filed by the petitioner is barred by limitation under Section 136 of the Limitation Act, 1963. Challenging the aforesaid order, the petitioner has preferred the present writ petition before this Court.

2. According to the learned counsel for the petitioner society, the said Execution Petition has been filed only as a continuous proceedings of the surcharge order. Subsequently, the terminal benefits of the petitioner was withheld by society in the year 2004. The Execution Petition filed by the petitioner is within the time. The order passed by the first respondent is unsustainable in law and contrary to the provisions of the Act.

3. The learned counsel for the third respondent would submit

that the petitioner passed the surcharge order on 29.02.1996 against the third respondent / the President of the Society for a sum of Rs.2,05,465/- along with 12 per cent interest per annum. Challenging the aforesaid surcharge order, the third respondent preferred an appeal CMA.No.32 of 1996 and the same was dismissed on 09.04.2001 as abated. The third respondent on behalf of the society had filed a suit in O.S.No.468 of 1994 on the file of the Subordinate Judge, Coimbatore against the Sampooranam Textiles and obtained a decree dated 02.01.1997 for a sum of Rs.2,05,464/- Subsequently, the third respondent retired from Service on 30.06.2014. The petitioner society, based on the surcharge order, withheld the amount of terminal benefits of the third respondent. The petitioner society filed Execution Petition before the first respondent for executing the surcharge order dated 29.02.1996 and issued a demand notice dated 17.06.2015 to the third respondent. After receiving the demand notice, the third respondent filed an appeal in CMA.No.24 of 2015 before the first respondent / the Tribunal by raising the ground that the said Execution proceedings is barred by limitation under Section 136 of the Limitation Act. By considering the said provision, the Tribunal allowed the appeal. Therefore, there is no warrants to interfere with the order passed in favour of the third respondent by the Tribunal.

4. Considered the rival submissions made by the learned counsel for the parties and perused the materials available on record.

5. The case of the writ petitioner is that pursuant to the surcharge order passed on 29.02.1996, the third respondent filed an appeal in CMA.No.32 of 1996 which was dismissed by order dated 09.04.2001 as abated. The petitioner filed an execution petition for executing the surcharge order dated 29.02.1996 before the first respondent. According to the petitioner society, a sum of Rs.2,05,464/- from the terminal benefits of the third respondent was withheld. Since the amount withheld by the petitioner society is not adjusted to the due to be paid by the third respondent as per the surcharge order, the petitioner society initiated execution proceedings for recovering the balance amount. The said execution proceedings is a continuous process of the earlier surcharge proceedings. Therefore, it is not barred by limitation as stated by the Tribunal.

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6. At this juncture, it is useful to extract the following relevant provision under Article 136 of the limitation Act, 1963.

<i>Article</i>	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
136	<i>For execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court</i>	<i>Twelve years</i>	<i>When the decree or order becomes enforceable or where the decree or any subsequent order directs and payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment of delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.</i>

7. By relying the aforesaid provisions under Article 136, the learned counsel for the third respondent would submit that the Execution Petition filed by the writ petitioner is barred by limitation. Therefore, the contention of the learned counsel for the writ petitioner is liable to be rejected. Further, the learned counsel for the third respondent has relied upon the Judgment in the case of ***Ratansingh Vs. Vijaysingh and others*** reported in **(2001) 1 Supreme Court Cases 469** wherein the Hon'ble Supreme Court has given as follows.

"16. So the end result is this:

*The decree became enforceable on
01.08.1973 when the appellate court passed the*

decree which superseded the decree of the trial court. As no decree was passed by the High Court in the second appeal the decree of the first appellate court remained unaffected and the enforceability once commenced remained undisturbed for a period of 12 years therefrom. The execution process initiated by the appellant long after the expiry of 12 years from 01.08.1973 is thus irretrievably barred. Hence interference is called for. The appeal is accordingly dismissed."

8. The learned counsel for the third respondent would further contend that the withheld of retirement benefit by the petitioner would not create a right to the petitioner by filing execution petition within 12 years' period. Therefore, limitation period have accrued from the date of passing of the order in appeal in CMA.No.32 of 1996 dated 09.04.2001 under Article 136 of the Limitation Act, 1963. Hence, the contention of the petitioner society, the period of limitation would accrues from the date of withheld of terminal benefits is unacceptable and the same is liable to be rejected.

9. In view of the facts and circumstances of the case, there is

no warrants to interfere with the orders passed by the Tribunal and there is

D.KRISHNAKUMAR. J,

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no error or illegality or perverse in the order passed by the Tribunal.

10.The writ petition fails and accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12.07.2017

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

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