



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2017**

CORAM:

THE HONOURABLE **MR. JUSTICE T.S.SIVAGNANAM**
AND
THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

W.A. (MD) No.442 of 2017 &
C.M.P. (MD) .No.4086 of 2017

S.M.S.Elangovan ...Appellant/4th Respondent

Vs.

- 1.V.Damodharan
S/o.Venkatachala Konar,
Proprietor, Padhmini Flements,
No.41, LGP Nagar, Karur 2. ... 1st Respondent / Petitioner
- 2.The Karur Town Cooperative Bank Ltd.,
Karur.
- 3.The Deputy Registrar - Co-operative,
Deputy Registrar's Office, Karur Circle,
Karur.
- 4.The Regional Joint Registrar of Co-operative Societies,
Karur Region, Karur Collectorate Campus,
Karur. ... Respondents 2 to 4/ Respondents 1 to 3

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order 23.11.2016 in W.P.No.15938 of 2013.

Prayer in WP(MD). 15938/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records in Revision Petition No.1/2011 Sa.Pa. dated 14.12.2012 on the file of the 3rd Respondent and quash the same as illegal ultravires, unconstitutional and capricious and for consequential reliefs and thus render justice.

For Appellant	: Mr.AR.L.Sundaresan Senior Counsel for M/s.AL.Ganthimathi
For Respondents	:Mr.V.Raghavachari for R1 Mr.K.Govindaraj for R2 Mr.S.Chandrasekar for R3 and R4 Government Advocate

**JUDGMENT**

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**]

Heard, Mr.AR.L.Sundaresan, learned Senior Counsel for M/s.AL.Ganthimathi appearing for the appellant, MrV.Ragavachari, learned counsel, who accepts notice for the first respondent, Mr.K.Govindaraj, learned counsel who accepts notice for the second respondent and Mr.S.Chandrasekar, learned Government Advocate, who accepts notice for the respondents 3 and 4. By consent, the writ appeal itself is taken up for final disposal.

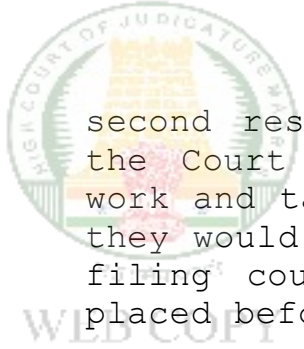
2. This appeal has been filed by the fourth respondent in the writ petition against the order dated 23.11.2016 in W.P.(MD). No.15938 of 2013. The said writ petition was filed by the first respondent herein challenging an order dated 14.12.2012 passed by the fourth respondent in exercise of his revisional power vested under Section 153 of the Tamilnadu Co-operative Societies Act. The said order was put to challenge by filing a writ petition in the year 2013, namely W.P.(MD).No.15938 of 2013.

3. The first contention raised by the learned senior counsel for the appellant is that though the writ petition is stated to have been filed in the year 2013, private notice was served on the appellant/fourth respondent only on 26.10.2016 for the hearing on 03.11.2016. On receipt of the private notice, the appellant has engaged a counsel and they have filed vakalat well before 03.11.2016. The writ petition was taken up for final disposal on 23.11.2016 and on the same day was allowed by issuing certain directions. The Writ Court has noted that there is no appearance for the appellant/fourth respondent as well as for the second respondent herein.

4. The case of the appellant is that since for the first time they came to know that the writ petition has been filed by the first respondent herein only on 26.10.2016 and they were contemplating of requesting the Court to grant an adjournment for filing counter affidavit as there have been several earlier litigations between the parties. Further, the appellant would contend that the appellant being the auction purchaser was entitled to be heard in the matter.

5. The second respondent herein not so far fructified the award that has been passed by the third respondent, though entered appearance in the writ petition earlier would submit they were not heard in the matter.

6. The problem appears to have been arising because when the writ is taken up for disposal after 4.45 p.m. the learned senior counsel for the appellant and the counsel for the



second respondent bank would submit that they have no idea that the Court would resume single sitting after the Division Bench work and take up the matter and if they had information, certainly they would mention before the Court and sought for adjournment for filing counter as there are several factual issues have to be placed before the Court.

7. Further it is the submission of the learned Senior Counsel for the appellant that the Writ Court could not re-write the award passed by the third respondent herein, which was never challenged by the first respondent/writ petitioner and what has been questioned by way of revision is only a sale proceedings, which is in furtherance to the award. Therefore, it his submissions that if the award has not been questioned, the challenge to the sale proceedings has to necessarily fail.

8. At this juncture we are not inclined to go into the merits of the matter as we are satisfied that the appellant as well as the second respondent bank did not have adequate opportunity before the writ Court to put forth their submissions. The appellant is required to be heard in the matter and he is the auction purchaser. Therefore, we are inclined to set aside the impugned order and restore the writ petition to the file of this Court to be heard and decide, after counter affidavit are filed by the appellant/fourth respondent and the second respondent bank/first respondent in the writ petition.

9. In the result, the writ appeal is allowed and the impugned order is set aside and the W.P.(MD).No.15938 of 2013 is restored to the file of this Court to be heard and decided afresh after pleadings are completed. The parties are directed to complete the pleadings, within a period of 4 weeks from today. List the writ petition before the appropriate Court immediately after vacation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS 1)

/TRUE COPY/

Sub Assistant Registrar

jikr

To

1. The Deputy Registrar - Co-operative,
Deputy Registrar's Office,
Karur Circle,
Karur.



2. The Regional Joint Registrar of Co-operative Societies,
Karur Region, Karur Collectorate Campus,
Karur.

WEB COPY

+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 55104

+1 cc to MR.V.RAGHAVACHARI , ADVOCATE, SR NO: 54523

+1 cc to M/S AL.GANDHIMATHI, ADVOCATE, SR NO: 54229

JAM/10.05.17/MSA/SAR 3 / 4P-6C

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