

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1505 of 2017
and
C.M.P.No.19825 of 2017

K.Baskaran ... Appellant/Petitioner

Vs

1.The Deputy Registrar of
Co-operative Societies/
Arbitrator, Cuddalore.

2.The Sale Officer
The Cuddalore District Central
Co-operative Bank Ltd.
Cuddalore 627 001.

3.The Special Officer
The Cuddalore District Central
Co-operative Bank
Cuddalore 607 001.

... Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.2736 of 2013 dated 24.07.2017.

W.P.No.2736 of 2013:

Writ Petition 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 3.8.1998 passed by the 1st respondent and confirmed by the Appellate Court (Principal District Judge) Cuddalore in C.M.A.8/ 2008 by judgment dated 29.11.2012 and consequently directing the respondents 2 and 3 to return the machine and 2 motors seized and removed by them on 26.12.2012 or their value.

For Appellant : Mr.G.Ethirajulu

For Respondents: Mr.L.P.Shanmugasundaram

Special Government Pleader (Co-op.)

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The Award passed by the Arbitrator fixing the liability on the appellant was challenged before the Co-operative Tribunal, Cuddalore in C.M.A. No.8 of 2008. The Tribunal, taking into account the entire payment made by the guarantor, dismissed the appeal on the ground that nothing survives for adjudication on account of the subsequent events. The order was challenged before the learned Single Judge with an additional prayer for return of the machines and motors seized and removed by the third respondent. The learned Single Judge dismissed the writ petition. The order is under challenge at the instance of the unsuccessful writ petitioner.

2. The learned counsel for the appellant contended that the payment made by the guarantor would not result in automatic termination of the statutory proceedings initiated by the appellant before the Co-operative Tribunal. According to the learned counsel, the issue raised by the appellant has to be adjudicated by the Tribunal on merits notwithstanding the payment made by the guarantor.

3. We have also heard the learned Special Government Pleader on behalf of the respondents.

4. The Award passed by the first respondent dated 03 August, 1998 was challenged by the appellant before the Co-operative Tribunal, Cuddalore (Principal District Judge, Cuddalore District) in C.M.A. No.8 of 2008. It is a matter of record that during the currency of the statutory appeal before the Co-operative Tribunal, the guarantor paid the entire amount. The said fact was reported to the Tribunal. The Tribunal, therefore, dismissed the appeal without adjudicating the issue raised by the appellant.

5. The Tribunal was expected to consider the merits of the matter. The fact that the guarantor paid the entire amount would not result in automatic termination of the statutory proceedings initiated by the appellant. The guarantor on payment of the amount is entitled to get reimbursement from the appellant. In view of the order dismissing the appeal, the appellant would be made to pay the entire amount paid by the guarantor. In case, the appeal is allowed and the amount is reduced, the liability of the appellant would be reduced to the extent of the relief given by the District Court. This aspect

was not considered by the learned Single Judge. We are, therefore, of the view that the impugned order is liable to be set aside.

6. The order dated 24 July 2017 in W.P.No.2736 of 2013 is set aside. We direct the learned District Judge, Cuddalore to restore the proceedings in C.M.A. No.8 of 2008 and decide the same on merits and as per law. The Tribunal shall adjudicate the matter on merits taking into account the contentions raised by the appellant and the respondents. Such exercise shall be completed within a period of four months from the date of receipt of a copy of the judgment.

The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gms

To

- 1.The Deputy Registrar of
Co-operative Societies/
Arbitrator, Cuddalore.
- 2.The Sale Officer
The Cuddalore District Central
Co-operative Bank Ltd.
Cuddalore 627 001.
- 3.The Special Officer
The Cuddalore District Central
Co-operative Bank
Cuddalore 607 001.
4. The District Judge, Cuddalore.

+1 Cc to The Govt. Pleader sr 11742

+1 CC to Mr.L.P. Shanmuga Sundaram, Advocate sr 11895.

W.A.No.1505 of 2017

SS(CO)

SP(07/03/2018)