

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19250 of 2018 and
W.M.P.Nos.22638 & 22639 of 2018

1.D.Kesavan

2.Mrs.K.Manjula

.. Petitioners

Vs.

1.Deputy Registrar of Co-operative
Societies (Housing),
Vellore Region,
Vellore - 6.

2.C.1225 Arakonam Co-op Urban Bank Ltd.,
rep by its Managing Director/Deputy Registrar,
No.37, Kamarajar Salai,
Arakonam,
Vellore District.

3.Sale Officer/Co-operative Field Officer,
Arakonam, O/o Co-operative Joint Registrar,
Ranipet Circle,
Ranipet,
Vellore District.

... Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of certiorari calling for the
records pertaining to the impugned letter dated 09.07.2018 sent
by the 2nd respondent to the petitioners and quash the same.

For Petitioner : Mr.R.Neelakandan

For Respondents: Mr.L.P.Shanmughasundaram,
Special Government Pleader

O R D E R

This Writ Petition is directed against the impugned order
dated 09.07.2018 passed pursuant to the direction of this Court
made in W.P.No.14537 of 2018 dated 18.06.2018.

2.Earlier the petitioners were issued with auction notice in
C.E.P.No.21/2005-06 in ARC No.3192-2003-2004 dated 28.05.2018 by

the 3rd respondent in respect of the property comprised in Survey No.324/1A in Palanipettai, Gandhi Road, Arakonam Town, Vellore District, measuring an extent of 3348 sq.ft. Challenging the said proceeding in a Writ Petition in W.P.No.14537 of 2018, it was stated that the petitioners have borrowed a sum of Rs.10,00,000/- as mortgage loan from the 2nd respondent, out of which, the petitioners have paid Rs.5,00,000/-. Thereafter, the petitioners were unable to repay the balance amount.

3. Therefore, the Bank initiated recovery proceedings against the petitioners and obtained a decree in their favour. In order to execute the decree, the Bank filed an Execution Petition issuing a demand notice to the petitioners for a sum of Rs.45,25,370/- in total. Challenging the said demand notice, the petitioners have filed a Writ Petition in W.P.No.10324 of 2015 and this Court, by order dated 03.11.2015, directed the petitioners to approach the Bank and submit a proposal, clearly indicating the time within which they will settle the outstanding. Subsequently, the petitioners have also approached the Bank requesting to grant waiver of interest by virtue of the Government Orders or Circulars issued by the Registrar of Co-operative Societies and also sought for clarification of the outstanding dues.

4. It is at this stage, again a notice dated 28.05.2018 was issued. When the said notice was challenged in W.P.No.14537 of 2018, by order dated 18.06.2018, this Court directed the petitioners to pay a sum of Rs.7,00,000/- to the respondents on or before 02.07.2018, also making it clear that if the petitioners effect such payment, the respondents concerned can negotiate with the petitioners with regard to the re-schedulement of the balance amount on the basis of Circulars or Government Orders, if any.

5. The learned counsel for the petitioners submitted that the petitioners have deposited a sum of Rs.7,00,000/- on 28.06.2018. Thereafter, the present impugned notice dated 09.07.2018 has been issued.

6. The learned counsel for the petitioners assailing the impugned order submitted that while passing the impugned order against the petitioners calling upon them to pay a sum of Rs.43,78,781/- (Principal + Interest + Penal Interest) which is due to the Bank towards the loan amount, it was not mentioned as to what amount was borrowed, the interest accrued, amount payable by the petitioners, the balance amount to be paid by the petitioners and also the difficulty faced by the Bank in accepting the petitioners' offer for re-schedulement of the balance amount.

7.The learned Special Government Pleader appearing for the respondents also finds it difficult to support the impugned order. The reason being that, as mentioned by the learned counsel for the petitioners, when the Bank has indicated only the latest payment of Rs.7,00,000/-, nowhere it has mentioned the previous payment made by the petitioners and also failed to mention the principal amount, interest accrued and the penal interest.

8.In view of the above, this Court has no hesitation to quash the impugned notice dated 09.07.2018 and accordingly, the same is quashed.

9.The respondents are at liberty to work out the balance amount payable by the petitioners and then issue a fresh notice calling upon the petitioners to pay the same. The respondents are also directed to take into account the Circulars or Government Orders for granting waiver of interest, if it is applicable to the petitioners.

10.In the result, the Writ Petition is allowed.

11.After all, this Court finding that the impugned order is not a reasoned order, inclined to impose exemplary costs for wasting the valuable time of this Court and also the money of the Bank while defending the case.

12.The learned Special Government Pleader repeatedly requested this Court not to impose any cost and however submitted that he would advise the officers to abide by the orders passed by the Court and also act in aid of the Court always.

13.Accepting the repeated request made by the learned Special Government Pleader, this Court is not inclined to impose costs. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Deputy Registrar of Co-operative Societies (Housing),
Vellore Region, Vellore - 6.

2. The Managing Director/Deputy Registrar,
C.1225 Arakonam Co-op Urban Bank Ltd.,
No.37, Kamarajar Salai, Arakonam,
Vellore District.

3. Sale Officer/Co-operative Field Officer,
Arakonam, O/o Co-operative Joint Registrar,
Ranipet Circle, Ranipet, Vellore District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr.51667
+1cc to the Government Pleader Sr.51830

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vsn ii[co]
srg 21/08/2018



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