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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.07.2018

DELIVERED ON : 22.10.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.1461 of 2018

and

CMP (MD) No.6322 of 2018

S.Velammal

.. Petitioner/Appellant/
3rd party

vs

1.The Deputy Registrar of Co-operative Societies,
Cheranmahadevi
O/o the Deputy Registrar of Co-operative Societies,
Railway Station Road,
Cheranmahadevi,
Tirunelveli District.

2.The President,
O.1942 Sivanthipuram Primary Co-operative
Agricultural Loan Society,
1-377A, Main Road, Adaiyakarunkulam,
Vickramasingapuram Post,
Vickramasingapuram-627 425
Ambasamudram Taluk,
Tirunelveli District.

3.M.Iyyappan (died)

4.K.Manoharan

5.K.Velu

6.S.Azhagesan

7.T.Sankaranarayanan

...Respondents 1 to 7/Respondents 1 to 7/
Defendants

8.Shanthi

9.Anitha

10.Priya

.. Respondents 8 to 10/Respondents 8 to 10/
3rd Parties

Revision filed under Article 227 of Constitution of India
against the order dated 9.4.2018 made in C.M.A. (CS) No.35 of 2016 on



the file of the Principal District Court (Co-operative Tribunal), Tirunelveli.

For Petitioner : Mr.P.R.Prithiviraj

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ORDER

Challenging the order of the learned Principal District Court (Co-operative Tribunal), Tirunelveli dated 9.4.2018 made in C.M.A. (CS) No.35 of 2016, the petitioner has preferred this Civil Revision Petition.

2. The petitioner herein has filed an appeal being C.M.A.(CS) No.35 of 2016 before the learned Principal District Court (Co-operative Tribunal), Tirunelveli, hereinafter referred to as "*the Tribunal*", challenging the order dated 4.7.2016 passed under Section 167 of the Tamil Nadu Co-operative Societies Act, hereinafter referred to as "*the said Act*".

3. Upon consideration of the rival submissions, the Tribunal has dismissed the Civil Miscellaneous Appeal holding that the third parties, who were aggrieved over the attachment of properties were entitled to file only claim petitions as contemplated under Rule 140 read with 135 of the Tamil Nadu Co-operative Societies Rules, 1988. Aggrieved by the order of the Tribunal, the petitioner had filed the present revision.

4. I heard Mr.P.R.Prithiviraj, learned counsel for the petitioner and perused the materials available on record.

5. Assailing the order of the Tribunal, the learned counsel for the petitioner submitted that any person aggrieved by an order passed under Section 167 of the said Act can file an appeal to the Tribunal. Therefore, the Tribunal has erred in holding that the petitioner has to invoke Rule 135 and 140 of the Tamil Nadu Co-operative Societies Rules, 1988, herein after referred to as "*1988 Rules*". He would submit that Rule 135 deals with sale of the property and Rule 140 speaks about mode of making attachment before judgment. Therefore, the appeal filed by the petitioner before the Tribunal was very much maintainable and the order of the Tribunal dismissing the appeal on the point of maintainability was not in consonance with the relevant provisions of the said Act and its 1988 Rules. The leaned counsel further submitted that the reasoning assigned by the Tribunal do not deserve any merits and the same needs to be interfered with.

6. The petitioner is a third party to the second respondent Society. The 2nd respondent has initiated surcharge proceedings



against the respondents 3 to 7 before the 1st respondent and the 1st respondent has issued a show cause notice under Section 167 of the said Act to the respondents 3 to 7. Followed with the notice, the 1st respondent has also issued an order calling upon the respondents 3 to 7 to furnish security for the loss caused to the 2nd respondent and in default, an order of attachment would be passed against the immovable properties described in the said notice.

7. The petitioner, who is sister-in-law of the 3rd respondent has filed an appeal before the Tribunal stating that in order to settle the loan amount received by the 3rd respondent, he had sold the schedule mentioned properties through a registered sale deed dated 27.6.2016 in favour of her and from the date of sale, she was in possession and enjoyment of the same and therefore, the property purchased by the petitioner was not liable for the attachment.

8. According to the petitioner, the date of issuance of show cause notice and the date of attachment order was one and the same. Therefore, the attachment made was not valid under law and liable to be set aside.

9. As stated supra, the petitioner is not a party to the surcharge proceedings initiated against the employees of the 2nd respondent Society.

10. The petitioner has filed the appeal before the Tribunal invoking Section 152(1) of the said Act stating that she is an aggrieved person. However, the Tribunal held that third parties aggrieved over the attachment of properties were entitled to file only claim petitions and therefore, the appeal preferred by the petitioner is not maintainable.

11. The point that arises for consideration is whether the Tribunal was right in dismissing the appeal filed by the petitioner on the question of maintainability.

12. Section 152 of the said Act provides appeal remedy to any person aggrieved by any of the proceedings mentioned in the said Section. Section 152(1)(a) reads thus:

"152. Appeals

(1) Any person aggrieved by

(a) any decision or award passed or order made or proceedings taken under sub-section (1) of Section 87, sub-section (2), sub-section (3) or sub-section (4) of Section 90, Section 118, Section 119, Section 143, Section 144 or Section 167."



13. Section 167 of the said Act empowers the Registrar to direct furnishing security and direct the conditional attachment of the property. The procedure for attachment has been provided under Rule 140 of 1988 Rules.

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14. Rule 140 of 1988 Rules reads as under:

"Rule 140 Mode of making attachment before judgment.

- (1) Attachment of property under Section 167 shall be made in the manner provided in the foregoing rules of this Chapter.

(2) Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in the foregoing of this Chapter.

(3) Where a direction is made for the attachment, of any property under sub-rule (1), the Registrar shall order the attachment to be withdrawn,

(a) when the party concerned furnishes the security required together with the security for the cost of the attachment; or

(b) when the Registrar makes an order under sub-section (1) of section 167 that the party concerned need not repay or restore any money or property or contribute any sum to the assets of the society by way of compensation; or

(c) when the dispute referred to in sub-section 91) of section 90 has been decided against the party at whose instance the attachment was made; or

(d) when the Liquidator determines under clause (b) of sub-section (2) of section 139 that no contribution need be made by the party concerned.

(4) Attachment made under sub-rule (1) shall not affect the rights existing prior to the attachment of persons not parties to the proceedings in connection with which the attachment was made, nor bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.

(5) Where property is under attachment by virtue of the provisions of this rule and a decree is attached, it shall not be necessary upon an application for execution of such decree, to apply for re-attachment of the property."



15. Rule 140(2) enables the parties to file claim relating to the attachment of the properties and such claim filed shall be investigated in the manner and the authority specified in the Rules. Rule 140(4) states that attachment made under sub-rule (1) shall not affects the rights existing prior to the attachment of the persons not parties to the proceedings in connection with which the attachment was made.

16. Rule 140 of 1988 Rules not only provides avenues to the third parties for filing claim petition to remove the attachment made under Section 167 of the said Act and it also contains substantial law that attachment made shall not affect the rights existing prior to the attachment of the persons not parties to the proceedings in connection with which the attachment was made.

17. However, Section 152(1) of the said Act says that any person aggrieved by any decision or award passed or order made or proceedings taken under Section 167 may appeal to the Tribunal.

18. Finding that the appellate provision under the Tamil Nadu Co-operative Societies Act is very comprehensive in nature, in *A.Balaraman and others v. Deputy Registrar of co-operative Societies, Cheyyar, Thiruvannamalai District and others*, reported in (2009) 3 MLJ 1032, the First Bench of this Court held as under:

"4. ... The appellate provision under Section 152 of the said Act has been very widely worded. The said right of appeal has been given from orders passed under various provisions. The appellate provision is very comprehensive in nature. Section 152(1) of the said Act clearly says that any person aggrieved by any decision or award passed or order made or proceedings take under sub-section 91) of Section 87, sub-section (2), sub-section (3) or sub-section (4) of Section 90, Section 118, Section 119, Section 143, Section 144 or Section 167 may appeal to the Tribunal. The meaning of the word any means all. So, any person who is aggrieved by any of the proceedings mentioned in Section 152(1)(a) of the said Act, can file an appeal. The said appeal is to be heard and disposed of by the co-operative Tribunal, which consists of a senior District Judge."

19. As rightly contended by the learned counsel for the petitioner, Rule 135 deals with the procedure to conduct claims and attachment of the property and also sale of the property. Rule 140 provides mode of making attachment before judgment.



20. In view of the principle laid down by the First Bench of this Court in *A.Balaraman and others v. Deputy Registrar of co-operative Societies, Cheyyar, Thiruvannamalai District and others*, supra, the remedy of the petitioner was to file an appeal before the Tribunal, which has having power of Civil Court. Therefore, the Tribunal was not right in saying that the petitioner is entitled to file only claim petition as contemplated under Rule 140 read with 135 of 1988 Rules. Therefore, in the light of Section 152(1)(a) of the said Act, the petitioner is entitled to file an appeal and thus, the appeal preferred by the petitioner is very well maintainable.

21. As far as the merits of the matter is concerned, the subject matter of challenge in the case on hand is the order dated 4.7.2016 passed by the 1st respondent in the surcharge proceedings initiated by the 2nd respondent. The order dated 4.7.2016 has been passed by the 1st respondent under Section 167 of the said Act prohibiting the respondents 3 to 7 from transferring or exchanging the properties mentioned in the attachment before judgment order by way of sale, gift or otherwise.

22. On a perusal of the typed set of papers, it is seen that on 4.7.2016, the 1st respondent issued notice under Section 167 of the said Act requiring the respondents 3 to 7 calling upon them to furnish the security for the amount due on or before 4.7.2016, failing which attachment before judgment would be ordered. On the very same date i.e., on 4.7.2016, the 1st respondent has passed an order under Section 167 of the said Act restraining the respondents 3 to 7 from transferring and/or alienating the properties from any third parties. In the case on hand, as per the appeal averments, the petitioner had purchased the property on 27.6.2016, prior to the show cause notice and the order of attachment.

23. The respondents 3 to 7 have not filed any claim and/or appeal, as the case may be, challenging the show cause notice and/or the order of attachment before judgment. Since the petitioner had purchased the property on 27.6.2016, prior to the issuance of notice/order of attachment, her grievance has to be considered by the Tribunal on merits and in accordance with law.

24. It is apposite to mention that on the question of maintainability, the Tribunal has dismissed the appeal filed by the petitioner. Now, this Court finds that the appeal preferred by the petitioner before the Tribunal is maintainable. Therefore, in order to answer the second point raised by the Tribunal - "Whether the appeal is to be allowed or not", the matter required to be remanded to the Tribunal.



25. The Tribunal is at liberty to consider the appeal of the petitioner on merits and in accordance with law and this Court has not decided anything on the merits of the appeal. This Court has decided only the maintainability aspect. All questions qua merits of the appeal are kept open.

26. For the foregoing reasons, the order of the Tribunal dated 9.4.2018 passed in C.M.A. (CS) No.35 of 2016 is set aside and the matter is remanded to the Tribunal for considering the appeal on merits. The Tribunal is at liberty to consider the appeal on merits based on the documents produced and/or to be produced by either parties. The Civil Revision Petition is disposed of in terms aforesaid. It is made clear that this Court has not gone into the merits of the appeal. All questions qua merits of the appeal are kept open. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS-III)

To

The Principal District Court, Co operative Tribunal,
Tirunelveli.

+1 CC To MR.P.R.PRITHIVIRAJ, Advocate SR. NO. 91178

order made in
C.R.P. (MD) (NPD) No.1461 of 2018
and
CMP (MD) No.6322 of 2018
22.10.2018

VS

TR/SKN/SAR-III (12.11.2018) 7P 3C