



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

W.A. [MD] .No.787 of 2018
and
W.M.P. (MD) No.4641 of 2018

M.G.Gangadharan

.. Appellant/Petitioner

Vs.

1. The Co-operative Sub Registrar (Housing)
cum Arbitrator,
Trichy.

2. The Secretary,
Srirangam Co-operative Housing
Society Limited - R.1281,
Trichy -6.

.. Respondents/ Respondents

PRAYER: Appeal is filed under Clause 15 of the Letter Patent Act, against the order, dated 03.05.2018 made in W.P.(MD)No.10523 of 2018 on the file of this Court.

Prayer in WP(MD)No. 10523/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Mandamus directing the 1st respondent to pass orders on the petitioner's application dated 01.05.2018 and 11.11.2016 within a time frame fixed by this Hon'ble Court.

For Appellant	:	Mr.R.Subramanian
For Respondents	:	Mr.V.R.Shanmuganathan Special Government Pleader

JUDGEMENT

[Judgement of the Court was delivered
by **K.RAVICHANDRABAABU, J**]



2.The appellant is the writ petitioner. The Writ Court dismissed the writ petition. The appellant as the writ petitioner sought for Mandamus directing the first respondent to pass orders on the petitioner's applications, dated 01.05.2018 and 11.11.2016, wherein and whereby, the writ petitioner requested the first respondent to withdraw the award already passed on 03.10.2016. The writ Court found that as against the award passed by the first respondent, the petitioner has to prefer an appeal and without doing so, he made such representation, which is not sustainable in law. Therefore, the writ Court dismissed the writ petition.

3.Heard the learned counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents.

4.It is seen that resulting out of a housing loan obtained by the writ petitioner from the second respondent society, an award came to be passed by the first respondent ultimately on 03.10.2016. There is no dispute to the fact that the said award was an exparte award, as could be seen from the reading of the award itself. Therefore, two course of action are left open to the writ petitioner, either to file an appeal against the said award before appropriate authority or to seek for setting aside the exparte award before the first respondent. Instead, the appellant/writ petitioner had made two representations, one on 11.11.2016 and another on 01.05.2018 and sought for withdrawal of the said award. No doubt, in the said representations, the appellant has not specifically prayed for setting aside the exparte award, even though the appellant has stated some reasons at paragraph No.4 of his representation, dated 01.05.2018 as to why he could not attend the proceedings on 03.10.2016. We are not going to express any view on the merits of such contention raised by the appellant, as we propose to remit the matter to the first respondent to consider and decide.

5.Considering the fact that the award is an exparte award and not made on merits, we are of the considered view that the representations made by the writ petitioner, dated 11.11.2016, followed by 01.05.2018, could be treated as the application filed seeking for setting aside the award and consequently appropriate orders shall be passed by the first respondent on merits and in accordance with law on such application. Accordingly, this writ appeal is disposed of, without expressing any view on the merits of the contentions raised by both the parties, only with the following directions and observations:-

"(a)The representations made by the appellant/writ petitioner, dated 11.11.2016 and 01.05.2018 shall be remitted to the first respondent, as the applications filed to set aside the award;

(b)Consequently, the first respondent, after giving



due opportunity of hearing to the appellant, shall pass orders on those applications, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order;

(c) The appellant is directed to co-operate with the first respondent for the disposal of the above said applications, as directed by this Court; and

(d) If the appellant fails to appear before the first respondent, on any day, fixed by the first respondent for enquiry in order to give effect to the order, the first respondent is at liberty to dismiss both the applications without waiting for the appellant to appear on any other day.

No costs. Consequently, connected Miscellaneous Petition is closed."

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Co-operative Sub Registrar (Housing)
cum Arbitrator,
Trichy.

+ 1 cc TO Mr.R.Subramanian , Advocate in SR No. 71802
+ 1 cc TO The Special Government Pleader in SR No. 72251

rj2

AE/SKN RSK/SAR2/18.07.2018/3P/4C

W.A. [MD] .No.787 of 2018
09.07.2018