



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.16793 of 2018

and

W.M.P. (MD) Nos.14851 and 14852 of 2018

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The Management,
T.C.85, Thoothukudi District Central
Cooperative Bank Limited,
Represented by its General Manager,
No.109/5-D, Ettayapuram Road,
Thoothukudi.

... Petitioner

-Vs-

1.The Deputy Registrar of Cooperative Societies,
O/o.Deputy Registrar of Cooperative Societies,
Thoothukudi,
Thoothukudi District.

2.The Managing Director,
The Tirunelveli District Palmyrah Products
Cooperative Federation Limited,
Thoothukudi,
Thoothukudi District.

...Respondents

PRAYER: Writ Petition - filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by the 1st respondent vide Tha.Va.No.55/2010-2011 dated 20.07.2017 and consequential order vide Oo.Mo.4266/2017, Sa.Pa dated 06.11.2017 and Na.Ka.No.4653 / 2017, Sa.Pa dated 26.02.2018 and quash the same and consequently direct the first respondent to adjudicate the arbitration claim filed by the petitioner and decide the case on merits and in accordance with law within a time frame that may be fixed by this Court.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.J.Gunaseelankuthiah
Additional Government Pleader

ORDER

Heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner and Mr.J.Gunaseelankuthiah, learned Additional Government Pleader, who takes notice on behalf of the respondents.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.



3. The brief facts of the case are that the petitioner made an application under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 [hereinafter referred to as "the Act"] seeking for arbitration of the dispute. The first respondent herein had dismissed the proceedings for default by an order dated 20.07.2017. As against the same, the petitioner herein had filed an application for restoration on 31.10.2017 before same authority, which also came to be rejected on 06.11.2017 on the ground that the first respondent does not have powers to review the earlier order passed. Aggrieved against the rejection, a writ petition came to be filed by the petitioner herein before this Court in W.P.(MD)No.23882 of 2017. This Court, by order dated 22.12.2017, observed that the provisions of the Civil Procedure Code would apply in cases of this nature and thereby, directed the first respondent to dispose of the petitioner's application dated 31.10.2017 seeking restoration of the proceedings filed under Section 90 of the Act. Pursuant to the directions of this Court in W.P.(MD)No.23882 of 2017, the present impugned order has been passed on 26.02.2018 by the first respondent herein stating that the application does not require reconsideration.

4. Since the present writ petition has not been filed touching upon the merits of the petitioner's claim before the first respondent herein and has been limited to the ground that the first respondent had violated the orders of this Court, a counter-affidavit may not be required in the present case.

5. Apart from the statement, there is no other reason given in the impugned order as to why the restoration application of the proceedings under Section 90 of the Act does not require reconsideration. The impugned order dated 26.02.2018 is not only a non-speaking order, but also in violation of directions of this Court passed in W.P.(MD)No.23882 of 2017 dated 22.12.2017. As such, I do not find any justification on the part of the respondents to have rejected the petitioner's application.

6. In my view, the application need not be once again sent back to the first respondent for fresh consideration, since this Court is satisfied with the reason given by the petitioner herein for his non-appearance before the first respondent in the proceedings under Section 90 of the Act.

7. In the result, the impugned order in Na.Ka.4653/2017 saba, dated 26.02.2018 is set aside. The original order passed in Thava No.55/2010-2011 dated 20.07.2017 is also set aside and the matter is directed to be taken on the file of the first respondent. Consequently, the first respondent shall give an opportunity to the parties in the said proceedings, namely, the petitioner herein as well as the second respondent and pass appropriate orders / award within a period of three months from the date of receipt of a copy of this order.



8. With the above observations, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Deputy Registrar of Cooperative Societies,
O/o.Deputy Registrar of Cooperative Societies,
Thoothukudi,
Thoothukudi District.

2.The Managing Director,
The Tirunelveli District Palmyrah Products
Cooperative Federation Limited,
Thoothukudi,
Thoothukudi District.

+1cc to M/S.D.Shanmugaraja Sethupathi, Advocate SR.No.75788

+1cc to Special Government Pleader, SR.No. 76241

W.P.(MD)No.16793 of 2018

30.07.2018

sm

JM/RP/SAR 3/11.08.2018/3P/5C