



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.23211 of 2016

and

W.M.P(MD)No.16650 of 2016

M.Premalatha

... Petitioner

Vs

1.The Deputy Registrar of Co-operative Societies,
Tiruchirapalli Range,
Tiruchirapalli-20.

2.The Co-operative Sub-Registrar,
Varaganeri Town Co-operative Bank,
Tiruchirapalli District.

3.The Managing Director,
No.178, Tiruchirapalli Central Co-operative Bank Ltd.,
Tiruchirapalli-2.

4.The Sub-Registrar,
Thiruverambur,
Tiruchirapalli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating order dated 12.08.2016 in CEP No.1/2016-17 in Rc.No.1797/2016/S.F.1 passed by the first respondent herein and quash the same and direct the fourth respondent herein to forthwith remove the entry relating to the said attachment registered on 16.08.2016 as Document No.7 of 2016.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel for M/s.AL.Ganthimathi
For R1, R2 & R4 : Mr.M.Muthu,
Additional Government Pleader
For R3 : Mr.D.Shanmugaraja Sethupathi

ORDER

The order of attachment issued by the first respondent vide proceedings, dated 12.08.2016 is under challenge in this writ petition.



2.The learned Senior Counsel appearing on behalf of the petitioner made a submission that no doubt the authorities have got power under Section 167(1) of the Tamil Nadu Co-operative Societies Act to issue an order of attachment. However, the impugned attachment order has not been passed with application of mind.

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3.The grievances as advanced in this writ petition is that, the very same property was already mortgaged with the very same third respondent Bank. In other words, the writ petitioner had borrowed a loan by pledging the property, which is now attached in the impugned order, dated 12.08.2016. Therefore, the learned Senior Counsel is of the opinion that there cannot be any two attachments in respect of the same property and the authorities have not applied the mind in this regard, so also no opportunity was given to the petitioner to plead his grievances in respect of these aspects.

4.The learned counsel appearing for the third respondent/Co-operative Bank opposed the said contention by stating that the competent authority namely the Deputy Registrar issued an order of attachment under Section 167(1) of the Tamil Nadu Co-operative Societies Act and there is no irregularity as such. This apart, the attachment is made to protect the interest of the Bank when there are certain serious irregularities found during the course of Section 81 enquiry. The report was filed and based on the report actions were taken. Thus, it is for the writ petitioner to defend the case in accordance with the Rules and the procedures. Thus, the writ petition deserves to be rejected.

5.Considering the arguments of the learned Senior Counsel as well as the learned counsel appearing on behalf of the respondents, this Court is of an opinion that if the fact regarding the pledging of the very same property documents are correct, then the subsequent attachment may not be required. In the event, not pleading the documents by the writ petitioner in lieu of the loan, then it may be necessary to attach the property in order to protect the interest of the Bank. However, these aspects are to be verified by the competent authority by providing an opportunity to the petitioner if any or pass an order recording the reasons in this regard. Thus, on these limited ground, the order impugned dated 12.08.2016 is set aside and the matter is remitted back to the respondents for reconsideration of these factual aspects and pass an order recording the reasons and by providing an opportunity to the writ petitioner as well as the third respondent, within a period of four weeks from the date of receipt of a copy of this order.

6.The writ petitioner is directed not to alienate or do any encumbrance in respect of the property in question, till the orders are passed by the first respondent.



7. Accordingly, the writ petition stands disposed of. However, there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

/True Copy/

Sd/-
Assistant Registrar (RTI)

Sub-Assistant Registrar

To

1. The Deputy Registrar of Co-operative Societies,
Tiruchirapalli Range,
Tiruchirapalli-20.

2. The Co-operative Sub-Registrar,
Varaganeri Town Co-operative Bank,
Tiruchirapalli District.

3. The Sub-Registrar,
Thiruverambur,
Tiruchirapalli District.

+One cc to M/s.AL.Ganthimathi, Advocate, SR.No.45459
+One cc to Mr.D.Shanmuga Raja Sethupathy, Advocate, SR.No.45527
+One cc to The Special Government Pleader, SR.No.45971

am
RL/7C/3P/SV/MMS/SAR4/6/2/2018

W.P (MD) No.23211 of 2016

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