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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.30694 of 2008

1.V.Nagarathinam

2.N.R.Venkatachalam

3.V.Anandhan

4.V.Ramesh Kumar

.. Petitioners

Versus

1.The Co-operative Tribunal-
Principal District Court, Erode.

2.The Arbitrator (A.R.C.No.676/2003-04)
C/o.The Erode Co-operative
Housing Society Ltd.,
54, Balasubrayalu Street,
Erode-638 001.

3.The Erode Co-operative
Housing Society Ltd.,
rep. by its Secretary,
54 Balasubrayalu Street,
Erode-638 001.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari by calling for the records dated 23.09.2008 made in C.M.A. No.12 of 2006 on the file of the first respondent herein confirming the award dated 26.11.2004 made in A.R.C. No.676/2003-04 on the file of the second respondent herein, quash the same.

For Petitioners : Mr.S.Kaithamalai Kumaran

For respondents : R1 – Court

Mr.L.P.Shanmugha Sundaram,
Special Government Pleader
for R2

Mr.K.S.Jeyaganesan for R3

ORDER

The writ petition has been filed questioning the correctness of the impugned order dated 23.09.2008 made in C.M.A. No.12 of 2006 passed by the first respondent herein confirming the Award dated 26.11.2004 made in A.R.C. No.676/2003-04 on the file of the second respondent herein.

2.Assailing the impugned order, the learned counsel appearing for the petitioners would submit that the petitioners are wife, husband and sons respectively and the first petitioner obtained a loan of Rs.2,45,000/- from the Erode Co-operative Housing Society Ltd., the third respondent herein after mortgaging her house property, for which the petitioners 2 to 4 herein stood as guarantors. According to the learned counsel for the petitioners, as the balance amount of Rs.2,72,652/- was not paid, the matter was referred before the Arbitrator. However, the first petitioner received a summon issued by the Arbitrator, the second respondent herein to appear for the hearing on 28.08.2003. After receiving the same, the first petitioner appeared before the second respondent on 28.08.2003 and submitted her

written reply. Thereafter, the first petitioner came to know that an Award had already been passed against her by the second respondent. By letter dated 06.10.2004, the first petitioner addressed to the second respondent stating that no enquiry had been conducted pursuant to her reply and therefore, a copy of the award should be furnished to her. But there was no reply from the second respondent. Thereafter, she given a letter to the third respondent on 28.07.2005 requesting for furnishing of accounts and copy of the award if any made by the second respondent. By letter dated 04.08.2005, the third respondent replied that an award had already been passed by the second respondent in respect of the dispute raised against her and the same has been affixed on her house in the presence of the Village Administrative Officer. Pursuant to the letter dated 04.08.2005, the petitioner made a request seeking for a copy of the award.

According to the learned counsel for the petitioners, in spite of repeated petitions, the second respondent was not responded to the first petitioner and therefore, she filed a writ petition in W.P. No.663 of 2006 praying for a direction to the second respondent herein to furnish a copy of the award dated 26.11.2004 made in A.R.C. No.676/2003-04. By an order dated 20.01.2006, this Court directed the second respondent to furnish a copy of the award dated 26.11.2004. Pursuant to the said order, the second respondent furnished a copy of the award made by him. Immediately, she

filed an Appeal before the Co-operative Tribunal, the first respondent herein, who proceeded to confirm the award passed by the second respondent herein. Challenging the same, the petitioners are before this Court. Learned counsel appearing for the petitioners would submit that the Award passed by the second respondent as confirmed by the first respondent is liable to go for failure to afford an opportunity to the petitioners to defend the case filed against them.

3.A perusal of the records would show that the petitioners are the borrowers on a mortgage loan from the respondent Co-operative Housing Society and they have admitted the loan transaction. It is an admitted fact that they have borrowed a sum of Rs.2,45,000/- and the balance amount of Rs.2,72,652/- was un-paid and therefore, the matter was referred before the Arbitrator. It is seen that the Arbitrator have issued notice to the petitioners on 09.08.2003 to appear for the enquiry on 28.08.2003 and the above notice was received by the son of the first petitioner. But the petitioners have not appeared for enquiry on the said day. Thereafter, second notice was issued on 08.09.2003 for the hearing on 16.09.2003 and the same was also received by the son of the first petitioner, however, the petitioners have not appeared for the enquiry. Finally, the third notice was sent on 16.11.2004 for the hearing on 26.11.2004. Since the petitioners have refused to receive the notice, it was affixed on the outer door of the

residence in the presence of the witnesses. However, the petitioners have not appeared for enquiry on 26.11.2004. Finally, the Arbitrator has passed an Award dated 26.11.2004 setting the petitioners exparte on the ground that the petitioners have not appeared. Aggrieved by the said Award, an C.M.A. has been filed before the Principal District Judge, Erode and the same was dismissed holding that out of 53 instalments, the petitioners have paid only 24 instalments and the principal amount of Rs.1,59,276/- to be paid and as the interest and total are Rs.4,83,834/-, the petitioners have paid principal amount, interest, penal interest and other expenses at Rs.41,578/-, Rs.2,00,174/-, Rs.42,795/- and Rs.790.25 and in total Rs.2,85,337.25. However, the Principal District Judge, Erode has held that in the impugned award, the Arbitrator have considered all the above aspects and on perusal of the account books, the award has been passed. As the Principal District Judge, Erode, the first respondent herein, considering all the above aspects, has passed the impugned order correctly, this Court finds no reason to interfere the same.

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4.In view of the fact that the learned counsel appearing for the petitioners has admitted that the balance of 75% of the amount has not been paid, this Court is not inclined to entertain the writ petition and the same fails and dismissed. No costs.

06.02.2019

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To

The Arbitrator (A.R.C.No.676/2003-04)
C/o.The Erode Co-operative
Housing Society Ltd.,
54, Balasubrayalu Street,
Erode-638 001.



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