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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.06.2019

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THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 2400 of 2005

and

W.P.M.P. 2639 of 2005

K.Ganesh Murthy

... Petitioner

Vs

1. District Judge (Co-operative
Tribunal),
The Nilgiris District at
Udhagamandalam.

2. Cooperative Sub-Registrar,
(Arbitration),
Udhagamandalam.

3. The Special Officer,
Ex-servicemen Cooperative Stores,
Aravankadu,
Coonoor Taluk,
The Nilgiris.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the Award passed by the Cooperative Sub-Registrar, (Arbitration), Ootacamund in ARC No.526/2003-2004, dated 31.12.2003 the second respondent and the Judgment and decree passed by the District Judge of the Nilgiris at Uthagamandalam made in C.M.A. No.15 of 2004, dated 17.09.2004, the first respondent herein and quash the same.

For Petitioner : Mr.N.Damodaran

For Respondents : Mr.R.Bala Ramesh,
Special Govt. Pleader for R2

Mr.K.Sathish
for M/s.M.Umapathy for R3

O R D E R

This Writ Petition has been filed challenging the impugned orders of 2nd respondent dated 31.12.2003 and the judgment and decree dated 17.09.2004 passed by the 1st respondent and quash the same.



The petitioner has been carrying on the business of rice in wholesale as well as retailer and he used to supply rice to the 3rd respondent society. The 3rd respondent Society after receipt of rice used to give cheques for the amount of rice supplied therein. The petitioner has further averred in his affidavit that as per the accounts maintained in the usual course of business, the 3rd respondent society is liable to pay the dues for raising the sales bills and the 3rd respondent society used to make payments by way of cheques except one or two occasions, it was paid by way of cash receipt bill. The petitioner was making repeated representations to the 3rd respondent to clear the dues. However, to the shock and surprise, the petitioner has received a summons dated 22.10.2003 from the 2nd respondent/arbitrator asking him to attend the hearing before him on 03.11.2003 that was said to be initiated at the instance of the 3rd respondent society. Thereafter, the petitioner has attended on 03.11.2003 and on that day, the petitioner has appeared along with his counsel, who has filed the vakalat on his behalf. On that day, he was asked to give a statement and he has made a statement disputing his liability and further requested the said authority to conduct a proper enquiry and to get back the balance amount from the 3rd respondent society. Further, the petitioner's counsel demanded a statement of accounts and other records from the said authority on the basis of which, the 3rd respondent has raised his claim. However, without furnishing any document, the 2nd respondent has simply adjourned the hearing to 19.11.2003 and on that day, the enquiry was adjourned and without any intimation, the 2nd respondent had passed the award dated 31.12.2003 directing the petitioner to pay the amount of Rs.3,00,690/- with subsequent interest at 19% per annum from 01.01.2004. Against which, the petitioner has filed an appeal before the 1st respondent Co-operative Tribunal, and the 1st respondent has confirmed the award passed by the 2nd respondent. Challenging the concurrent findings of the respondents 1 and 2, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that though the 3rd respondent society raised a dispute before the 2nd respondent Arbitrator, the 2nd respondent issued a notice to the petitioner calling upon him to attend the enquiry on 03.11.2003 and his statement was recorded. Again the matter was posted on 19.11.2003 and without any notice, the arbitrator had passed the award and directed the petitioner to pay a sum of Rs.3,00,690/- with subsequent interest at 19% per annum, which is arbitrary, illegal and violation of principles of natural justice.



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4. Per contra, the learned Government Pleader appearing for the State would submit that though the 3rd respondent has raised a claim before the 2nd respondent Arbitrator, the 2nd respondent after giving full opportunity to the petitioner, the Arbitrator had passed an award and that was challenged before the Principal District Judge / Cooperative Tribunal, Nilgiris District under Sec.152 of Cooperative Societies Act. The learned Principal District Judge after perusing the entire records has confirmed the award. When the two authorities viz., original authority and the appellate authority have concurrently confirmed the award, the petitioner did not raise any error on the face of record and re-appreciation of entire evidence is impermissible under Art.226 of Constitution of India.

5. The learned counsel appearing for the 3rd respondent would submit that the petitioner, a wholesale as well as retail supplier of rice had been supplying rice to the 3rd respondent Ex-servicemen Cooperative Stores from 23.04.1997 to 31.08.2001 and 3rd respondent had been paying the amount by cash and cheques. During the said period, rice worth of Rs.3,42,255/- was purchased from the petitioner, but by mistake, a sum of Rs.5,06,000/- was paid to the petitioner and thus, an excess payment of Rs.1,63,745/- was paid by oversight and mistake. Hence, the 3rd respondent Cooperative Stores has made repeated requests to the petitioner to repay the excess payment made by them. However, the petitioner has failed to pay the same, the 3rd respondent has raised a dispute before the 2nd respondent Arbitrator. After perusing the entire statement of accounts, the 2nd respondent Arbitrator had passed an award and directed the petitioner to pay a sum of Rs.1,63,745/- with interest, totally a sum of Rs.3,00,690/- in favour of 3rd respondent and challenging the above said award, the petitioner has preferred an appeal before the Cooperative Tribunal and the Cooperative Tribunal has also confirmed the award. Challenging the concurrent findings of the original authority as well as the appellate authority, this Writ Petition has been filed by the petitioner and learned counsel prayed to pass appropriate orders.

6. On perusal of the records, it is seen that the petitioner is a wholesale and retail supplier of rice to the 3rd respondent Cooperative Stores and the petitioner did not dispute the aforesaid fact and he has admitted that he has supplied rice in favour of 3rd respondent and he did not dispute the fact that he has received a notice from the 2nd respondent Arbitrator. Accordingly, he appeared before the Arbitrator on 03.11.2003 and he has engaged a counsel and his counsel also appeared before the Arbitrator. However,



though the petitioner along with his counsel appeared before the Arbitrator, they did not mark any single document disputing the claim raised by the 3rd respondent. Further, the 3rd respondent has filed a statement of accounts before the Arbitrator and the same was produced before this Court. This Court perused the statement of accounts from 1997 to 1998 except few thousands, the payments were made by way of cheques, and the statement of accounts discloses that the petitioner has received the payment of Rs. 5,06,000/-, however, he has supplied rice to the worth of Rs.3,42,255/- and the petitioner has to pay balance amount of Rs.1,63,745/-.

7. In view of the above, without any document to show that the petitioner has supplied the rice to the tune of Rs.5,06,000/-, the entire amount was received by him. Further, the Arbitrator and the Cooperative Tribunal have arrived a conclusion and no document was produced before this Court as if the original authority and the appellate authority have committed an error in the order passed by them. In the said circumstances, the petitioner also did not establish that there was an error in the order passed by the original authority as well as appellate authority and in the absence of any document, this Court cannot interfere with the concurrent findings of the original authority as well as the appellate authority.

8. The learned counsel appearing for the petitioner would further submit that without any penal interest, the petitioner may be permitted to pay the award amount of Rs.3,00,690/- within a period of four weeks and the learned counsel appearing for the 3rd respondent has also conceded his request.

9. In view of the submissions made by the learned counsel appearing for the petitioner, this Court is inclined to permit the petitioner to pay the award amount of Rs.3,00,690/- without penal interest within a period of four weeks from the date of receipt of copy of this order.

10. In the result, this Writ Petition stands dismissed. No costs. Consequently, the Writ Petition Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

rpp



To

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1. District Judge (Co-operative Tribunal),
The Nilgiris District at
Udhagamandalam.
2. Cooperative Sub-Registrar,
(Arbitration),
Udhagamandalam.
3. The Special Officer,
Ex-servicemen Cooperative Stores,
Aravankadu,
Coonoor Taluk,
The Nilgiris.

+1cc to M/s.Kaavya Silambarasan, Advocate SR.No. 51925

+1cc to Mr. N.Damodaran, Advocate SR.No. 51913

W.P. 2400 of 2005
and

W.P.M.P. 2639 of 2005

A.SK(31/07/2019)