

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP No.3285 of 2011 and
M.P.No.1 of 2011

T.S.Arunachalam

... Petitioner

Vs.

1. The Secretary,
D.D.165, Pennagaram Taluk Agricultural
Producers Co-operative Sales Society,
Papparappatti, Pennagaram Taluk,
Dharmapuri District.

2. The Junior Inspector,
Sales Officer, Deputy Registrar's Office,
Dharmapuri.

... Respondents

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India against the order dated 21.03.2011 passed in CMA (CS) No.18 of 2009 by the Principal District Sessions Judge, Dharmapuri confirming the award No.265/2002-2003 dated 28.11.2002 passed by the Co-operative Sub Registrar and against the consequential sale notice dated 4.12.2009 by the Junior Inspector/The Sale Officer/Deputy Registrar Office, Dharmapuri.

For Revision petitioner : Mr.M.R.Jothimanian

For 1st Respondent : Mr.M.Palaniswamy

For 2nd respondent : No appearance

ORDER

This revision petition has been filed as against the order of the District Co-operative Tribunal, Dharmapuri, dismissing the appeal filed by the revision petitioner.

2. The brief facts leading to file the revision petition are as follows. The petitioner is the member of the

first respondent society and he obtained loan from the first respondent and he was not regular in payment of loan amount. Hence, the dispute is referred to the Registrar under Section 90 of the Tamil Nadu Co-operative Societies Act. The Registrar in his proceedings dated 28.11.2002 in 265/2002-2003, passed an award for a sum of Rs.2,54,299 with interest at the rate of 22% per annum from the date of 29.11.2002 till the date of realisation. Aggrieved over the same, the revision petitioner has filed an appeal before the Principal District Judge, District Co-operative Tribunal, Dharmapuri. It is also to be noted that the revision petitioner appeared before the Arbitrator on 28.11.2002 and admitted the outstanding amount payable by him is Rs.2,54,299/-. Taking note of the above fact, the award has been finalized and the same was challenged by the revision petitioner before the Co-operative Tribunal. It is the contention of the revision petitioner that subsequent to the date of award passed, he paid Rs.50,000/- on 20.01.2003 and thereafter, paid the remaining amount to the Secretary of the society and for such payment, the Secretary issued a certificate dated 20.01.2003. Further according to the revision petitioner, there is no due payable by him. However, the first appellate court disbelieved the certificate and dismissed the appeal. Against which, the present revision petition has been filed.

3. The learned counsel appearing for the revision petitioner reiterates the same contention as pleaded before the court below. His further contention is that the entire award amount has been paid to the Secretary and he issued a certificate dated 20.01.2003. Therefore, the revision petitioner is not liable to pay any amount to the society.

4. The learned counsel appearing for the first respondent vehemently objected the said contention on the ground that the above certificate was obtained from the dismissed employee on later date and only for the purpose of this case, that certificate has been obtained which is fabricated one and the person who issued the certificate is also not in service in the society. Hence, prayed for dismissal of the revision petition.

5. I have perused the records. Admittedly, the dispute with regard to the nonpayment of loan was referred to the Registrar for recovery of the same. The borrowal of the loan from the society is not disputed by both parties. Similarly, during the arbitration proceedings, the revision petitioner appeared before the Registrar and admitted his liability. Taking note of the above fact, the Registrar has passed an award of Rs.2,54,299/- with interest at the rate of 22% p.a from the date of 29.11.2002 till the date of realisation, to be paid by

the revision petitioner to the society.

6. It is the specific contention of the revision petitioner that subsequent to the award date, he paid Rs.50,000/- to the society on 20.01.2003, which has not been disputed by the society. The counsel appearing for the respondent has also admitted the above payment. It is the further contention of the revision petitioner that the remaining amount has also been paid by him to one Selvaraj, who is the Secretary of the society. This contention is the issue in this revision petition. The above certificate has not seen the light of the day before the Registrar and it has been produced only during the appeal proceedings before the Co-operative Tribunal. It is also not in dispute that the above said Secretary was already dismissed from the service of the society. That being the position, when the person has already been facing disciplinary proceedings, the due payment made to him is contrary and highly improbable. The revision petitioner having paid the amount of Rs.50,000/- to the society, there was no reason as to why he has not paid the remaining amount to the society directly, instead of paying the same to the so called Secretary, who has stated to have been dismissed from service and this aspect created a serious doubt about the Ex.P1, certificate. Therefore, the contention of the revision petitioner that the remaining amount has been paid to the individual is contrary and improbable and cannot be countenanced.

7. The Co-operative Tribunal has in fact considered this aspect and disbelieved the certificate Ex.P1 relied upon by the revision petitioner and rejected the same. Considering the conduct of the parties, this court is also unable to accept the contention of the revision petitioner. Hence, the alleged discharge pleaded by the revision petitioner cannot be countenanced. Accordingly, the award amount passed by the Registrar has to be necessarily upheld, since the award has been passed only on the admission made by the revision petitioner.

8. As far as the interest portion is concerned, the Registrar in fact has awarded interest at the contractual rate of 22% per annum. In my view, the same is excessive, considering the fact that the revision petitioner is an agriculturist. The Registrar having discretion to award interest other than contractual rate, has not exercised his discretion judicially. The Registrar, while exercised his discretion, ought to have kept in mind the status of the parties. Admittedly, the revision petitioner is an agriculturist. Therefore awarding 22% interest, in my view, is certainly excessive and in fact usurious. Accordingly, this court inclined to modify the interest portion alone from 22% to 9% p.a. from the date of award till the date of realisation.

9. In the result, the interest portion of the award No.265/2002-2003 dated 28.11.2002 alone is modified from 22% to 9% from the date of award till the date of realisation and such interest shall be calculated on the award amount of Rs.2,54,299/-, less the amount Rs.50,000/- already paid by the revision petitioner.

10. With the above observation, this revision petition is partly allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1.The Principal District Sessions Judge,
Dharmapuri.

2.The Secretary,
D.D.165, Pennagaram Taluk Agricultural
Producers Co-operative Sales Society,
Papparappatti, Pennagaram Taluk,
Dharmapuri District.

3.The Junior Inspector,
Sales Officer, Deputy Registrar's Office,
Dharmapuri.

4.The Sub Registrar,
Co-operative Tribunal, Pennagaram.

+1 cc to Mr.M.R.Jothimanian, Advocate, Sr.No. 33051

+1 cc to Mr.M.S.Palaniswamy, Advocate, Sr.No. 33254

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RSV(CO)
CSL/10.05.2019