

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5596 of 2011

- 1.D.J.Riswan Basha (Deceased)
- 2.D.R.Saifulla
- 3.Shakila Bagam
- 4.Z.Shaheena

P2 to P4 are substituted as legal heirs of the first petitioner vide order dated 19.08.2019 in W.M.P.No.23969 of 2019

...Petitioners

vs.

1. The Secretary,
Dharmapuri Co-operative Building Society
K.K.145, Lakshmi Colony,
Dharmapuri, Dharmapuri District.
2. The Co-operative Sub Registrar/
Arbitrator (Housing),
Dharmapuri, Dharmapuri District.
3. The Sale Officer/
Deputy Registrar (Housing),
Vellore Region, Vellore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd respondents' ex-parte award in ARC.No.1273/2003-2004 dated 24.06.2004 and in confirming the said award in C.M.A.(Co-operative Society) No.19/2009 dated 03.09.2010 by the learned District Co-operative Tribunal/District Sessions Judge, Dharmapuri and quash the same.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.R.Bharanidharan
for R1.
Mr.T.Girija,
Government Advocate
for R2 & R3.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorari, to call for the records of the 2nd respondents' ex-parte award in ARC.No.1273/2003-2004 dated 24.06.2004 and in confirming the said award in C.M.A.(Co-operative Society) No.19/2009 dated 03.09.2010 by the learned District Co-operative Tribunal/District Sessions Judge, Dharmapuri and quash the same.

2. The case of the petitioners is that they are the owners of the premises comprised in D.No.13/2, New.D.No.2, Abdul Karim Street, Dharmapuri Town and District, having purchased the same for valuable consideration under the Sale Deed.

3. The petitioners have availed a house loan from the first respondent herein for a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousands Only) by executing a Mortgage Deed in favour of the first respondent Housing Society on 27.03.2001 and the same was agreed to be repaid within 10 years (120 instalments) and the rate of interest was 17.5% per annum and the 1st respondent had given loan Account No.825/2001.

4. The learned counsel for the petitioners would submit that though the award was passed in the year 2004 and fixing the award amount at Rs.4,89,237/-, which is included in the penal interest and the first petitioner has also ready to pay the said amount. During the pendency of the writ petition, the first petitioner was passed away and the other petitioners are impleaded as a legal heirs of the first petitioner. The learned counsel would further submit that without going into the merits of the case, the petitioners have ready to pay the amount along with 10% interest, totally at Rs.6,60,449/-. However, according to the petitioners, the claim of the respondent board for a sum of Rs.7,76,642/-, is highly an exorbitant one.

5. By consent of both parties and taking into consideration of the facts and circumstances of the case, the respondent board has decided to arrive a calculation only at 10% interest of the amount would become at Rs.6,60,449/-, after deducting the amount of Rs.2,00,000/- paid by the petitioner in the year 2011, which is a reasonable one and the petitioner has also agreed to pay the said amount along with 10% interest.

6. In view of the above, this Court is inclined to grant liberty to the petitioners to deposit the said amount of Rs.6,60,449/-, by way of three installments, within a period of three months from the date of receipt of a copy of this Order.

7. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

ssb

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Dharmapuri Co-operative Building Society
K.K.145, Lakshmi Colony,
Dharmapuri,
Dharmapuri District.
2. The Co-operative Sub Registrar/
Arbitrator (Housing),
Dharmapuri,
Dharmapuri District.
3. The Sale Officer/
Deputy Registrar (Housing),
Vellore Region,
Vellore.

+1cc to Mr.M.R.Jothimanian, Advocate, SR.No.73241/19
+1cc to the Govt.Pleader, (Co-op), Advocate, SR.No.73525
+1cc to Mr.R.Bharanidharan, Advocate, SR.No.73893

W.P.No.5596 of 2011

Kak(11/10/2019)

सत्यमेव जयते

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