IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.7167 of 2019 &
W.M.P.No.7893 of 2019

1.O.K.Kumar
2.N.Senthil Vadivu
3.K.Suganya
4.K.Premkumar ... Petitioners

Vs.

1.The General Manager,
Omalur Cooperative Bank,
Omalur, Salem District.

2.The Deputy Registrar,
Omalur Region,
Deputy Registrar Office of
Co-operative Societies,
Omalur, Salem District. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorari to call for the records pertaining to the order dated 26.06.2018 made in C.M.A.(CS)No.09 of 2014 on the file of Principal District Judge, Salem, confirming the order passed by the second respondent dated 20.07.2012 in Case No.74/2012-2013 and quash the same.

For Petitioners: Mr.R.Marudhachalamurthy

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader for R-1

Ms.T.Girija
Government Advocate for R-2

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O R D E R

Mr.L.P.Shanmugasundaram, learned Special Government Pleader takes notice for the first respondent; Ms.T.Girija, learned Government Advocate, takes notice for the second respondent. By consent, this Writ Petition is taken up for final disposal.

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2. Challenging the order passed by the Principal District Judge, Salem, dated 26.06.2018 made in C.M.A.(CS)No.09 of 2014, confirming the order passed by the second respondent dated 20.07.2012 in Case No.74/2012-2013, this Writ Petition has been filed.

3. The petitioners by executing a mortgage deed for a sum of Rs.3,00,000/-, obtained a loan of a sum of Rs.2,20,000/- from the first respondent-Bank on 27.05.2004, and the petitioners were default in repayment of the loan. Hence, the first respondent-Bank initiated a suit in Case No.74 of 2012-2013 before the second respondent-Deputy Registrar. The second respondent, by an order dated 20.07.2012, passed an ex-parte Award. As against the Award passed by the second respondent, the petitioners preferred an appeal before the Principal District Judge, Salem in C.M.A.(CS)No.09 of 2014 and it was dismissed on 26.06.2018, by confirming the order passed by the second respondent. Hence, the present Writ Petition.

4. According to the learned counsel for the petitioners that the the suit filed by the first respondent-Bank was time barred one and the second respondent-Deputy Registrar, without giving a notice and also opportunity of personal hearing to the petitioners, passed an Award arbitrarily. As against the order passed by the second respondent, the petitioners preferred an Appeal before the Principal District Judge, Salem, which was also erroneously dismissed, rejecting the substantial questions of law raised by the petitioners and confirmed the order passed by the second respondent and hence, prayed for quashing the orders passed by the Courts below.

5. The learned Special Government Pleader and the learned Government Advocate denied the submission made by the learned counsel for the petitioner and also brought to the knowledge of this Court, by relying upon the Award passed by the Deputy Registrar, wherein, the Deputy Registrar, recorded the notice served on the petitioners on various dates, viz., 06.06.2012, 05.07.2012 and 20.07.2012, to appear for the enquiry. On receipt of such notice, on 06.06.2012, the first petitioner appeared for enquiry and accepted to settle the outstanding amount within three months by installments and the first installment starts from 26.06.2012 and to that effect, the first petitioner has given a written statement and was also further agreed to appear on 05.07.2012 without any notice and a signature was also obtained from the first petitioner. But, the petitioners have not turned up for the enquiry and hence, a notice was served on 20.07.2012 for the final enquiry and after receiving the notice for the final inquiry, no one appeared and hence, an ex-parte Award was passed, by directing the petitioners to pay a sum of Rs.4,21,367/- with interest at 14% per annum and in a well considered judgment, the appellate Court also confirmed the Award of the Deputy Registrar and hence prays for dismissal of

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Writ Petition.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The main ground raised by the learned counsel for the petitioners is that the petitioners were not served with notice and given opportunity to put-forth their contentions. On perusal of record, it is seen that the second respondent-Deputy Registrar served notice to the parties on 06.06.2012 and on that date, first petitioner appeared for enquiry and undertook to pay the first installment on 26.06.2012 and further undertook to appear on 05.07.2012 without notice, but on 05.07.2012, the first petitioner was not appeared. Hence, final notice was served on 20.07.2012 and on that date also, the petitioners were not appeared and therefore, ex-parte award was passed. Hence, the contention of the petitioners that they have not served any notice and given opportunity to put-forth their contentions has no legs to stand.

8. The next ground raised by the learned counsel for the petitioners is that although loan payment was made on 31.01.2005 by the petitioners, the recovery proceeding was initiated only on 12.05.2012, which is well beyond the period of six years, hence, the same is barred by limitation. In my considered view, the said contention of the learned counsel for the petitioners cannot stand for legal scrutiny, as the learned Appellate Judge, after taking note of the last payment made by the petitioners, i.e., on 21.02.2012 and also the recovery proceedings dated 12.05.2012, which is well within the time limit, has rightly rejected the said contention.

9. In view of the above, this Court does not find any infirmity and no ground to interfere with the order passed by Principal District Judge, Salem, confirming the order passed by the second respondent-Deputy Registrar. Therefore, for the reasons stated above, the Writ Petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1.The General Manager,
Omalur Cooperative Bank,
Omalur, Salem District.

2.The Deputy Registrar,
Omalur Region,
Deputy Registrar Office of
Co-operative Societies,
Omalur, Salem District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No. 24623
+1cc to the Government Pleader, S.R.No. 25097

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