

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.13266 of 2019
and
W.M.P.No.13372 of 2019

The Tiruvannamalai District Central Co-operative Bank Ltd.,
Rep.by its Assistant General Manager,
Tiruvannamalai,
Tiruvannamalai District. ... Petitioner

/versus/

J.Ayyasamy Jain ... Respondent

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the Principal District Judge/Special Tribunal for Co-operative, Tiruvannamalai dated 25.01.2019 in C.T.A.No.02 of 2018 and quash the same and consequently permit the petitioner to proceed with the recovery of the loss sustained to the Bank and grant such other or further orders.

For petitioner : Mr.L.P.Shanmugasundaram
For Respondent : Mr.P.R.Krishnaraj

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The short point involved for consideration in this case is that, the Tribunal, which has heard the appeal preferred by the respondent herein in a matter arising out of proceedings under Section 152 of the Tamil Nadu Co-operative Societies Act had passed an order fixing Rs.5,00,000/- as interest for the loan amount of Rs.9,82,686/-, which is challenged by the petitioner Bank as illegal and improper.

3. The facts, which are relevant to decide the case, are that the respondent herein has borrowed a sum of Rs.4,99,000/- each in two installments with an agreement to repay with

interest at 18% and in case of default additional 3% as default interest. Due to default, the recovery proceedings have been initiated and ultimately culminated into an award of Rs.14,35,337/- with interest at the rate of 21% passed by an order dated 21.12.2001. The said order is the subject matter of the appeal under Section 152 of the Tamil Nadu Co-operative Societies Act before the Tribunal. While considering the merits of the case, the Tribunal has fixed Rs.5,00,000/- as interest for the principle of Rs.9,82,686/-. The order is challenged in the present writ petition.

4. The said order is liable to be set aside for the reason that while arriving the interest payable by the respondent, the Tribunal has not given reason as to how he has arrived Rs.5,00,000/- as interest for the principle amount of Rs.9,82,686/-. In the case of contractual obligation, the party who has agreed to pay particular rate of interest, he is bound to pay the same if it is permissible under law. If the adjudication authority fix the rate of interest contrary to the agreement then the rate of interest payable should have been mentioned in the order and the amount payable with interest should have been calculated in accordance with reduced interest fixed. As far as the impugned order is concerned, it is very silent about the rate of interest fixed by it and reason for reducing the agreed rate of interest.

5. Arbitrary fixation of interest Rs.5,00,000/- for a loan of around 10 lakhs borrowed in the year 1998, after 20 years is unreasonable and illegal. For that singular reason the order of the Tribunal dated 25.01.2019 is hereby set aside. The matter is remanded back to the Tribunal for fresh consideration and to pass appropriate orders in accordance with law, within a period of 3 months from the date of receipt of a copy of this order.

6. The learned counsel for the respondent would submit that pursuant to the order passed by the Tribunal, the petitioner has remitted a sum of Rs.14,82,686/-. If it so, the amount has to take into account the manner in which it has to be adjusted also to be adjudicated by the Tribunal.

7. Accordingly, this Writ Petition is disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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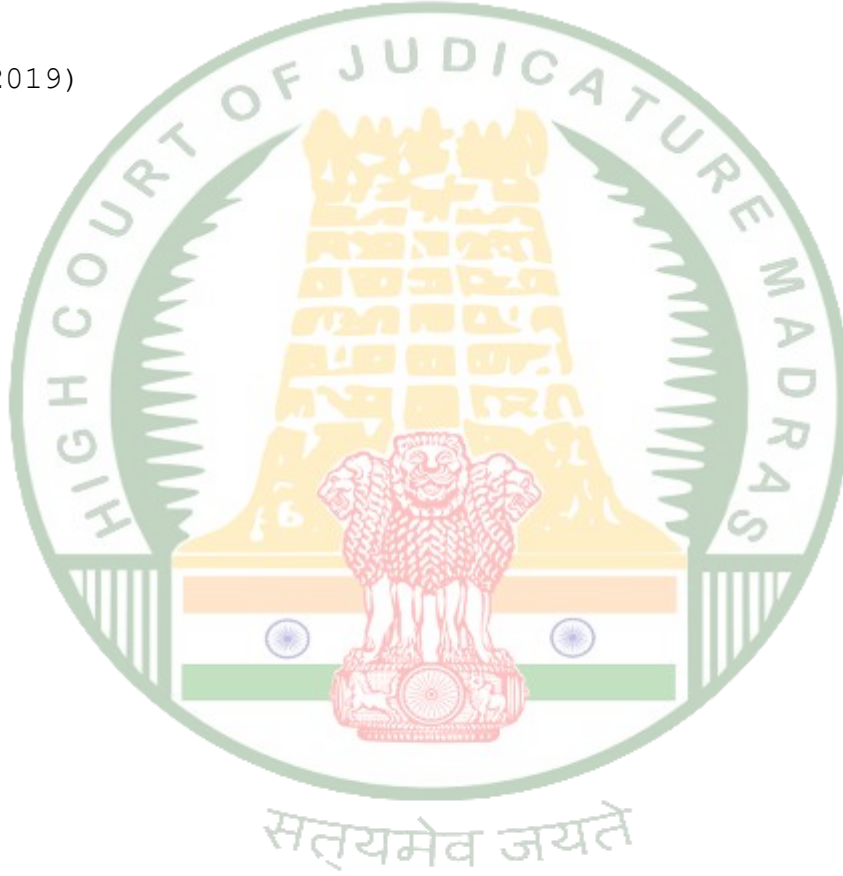
To

1.The Principal District Judge/
Special Tribunal for Co Operative
Tiruvannamalai.

+1cc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No. 63113
+1cc to Mr.Krishnaraj, Advocate, S.R.No. 62863

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MG (CO)
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