

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.23116 of 2018,

W.M.P. No.26996 of 2018 and W.P.No.2837 of 2019

1. Vanmathi
2. K.hariharan
3. Lalitha
4. P.Narayanan
5. Thilagavathy
6. P.Subramani

...Petitioners in both W.Ps.

-Vs-

1. The Deputy Registrar of Co-operative Societies, Namakkal.
2. The General Manager,
Rasipuram Cooperative Town Bank,
Rasipuram.

...Respondents in both W.Ps.

Writ Petition No.23116 of 2018 filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the entire records relating to the impugned award in ARC.No.106/2001-2002, dated 8.8.2001 passed by the first respondent, which was confirmed by way of judgment and decree in C.M.A.C.S.No.5/2010, dated 10.4.2017 on the file of the Principal District Judge, Namakkal District at Namakkal.

Writ Petition no.2837/19 filed under Article 226 of the Constitution of India to directing the respondents to consider and pass on the representation of the petitioners dated 29-12-2018 on the file of the respondents and to waive the interest and penal interest amount.

For Petitioner

in both W.Ps. : Mr.S.Doraisamy

For Respondent No.1: Ms.T.Girija, G.A. In WP.23116/18
Mr.D.Venkatachalam,AGP in WP.2837/19

For Respondent No.2: Mr.L.P.Shanmugasundaram,
in both W.Ps. Spl. Govt. Pleader

COMMON ORDER

The petitioner has challenged the impugned award, dated 8.8.2001, passed in ARC.No.106/2001-2002 on the file of the Principal District Judge, Namakkal in the present writ petition in W.P.No.23116 of 2018 and also seeks mandamus in W.P.No.2837 of 2019, directing the respondent to consider the representation of the petitioner, dated 29.12.2018 for waiver of penal interest.

2. The learned counsel for the petitioner would submit that by order, dated 21.12.2018, the petitioner has given an undertaking that the petitioner will deposit a sum of Rs.10 lakhs on or before 14.12.2014. The petitioner deposited a sum of Rs.3 lakhs and he was not in a position to pay the balance amount of Rs.7 lakhs since the property of the petitioner was attached by the respondent bank and requested this Court to release the said property from attachment to enable the petitioner to clear the dues. Further, it is submitted that the petitioner made an application before the respondent bank, for waiver of penal interest charged by the second respondent.

3. During the course of arguments, this Court asked the Manager of the second respondent Bank that the petitioner is ready to settle the entire outstanding dues, provided the petitioner is permitted to sell the mortgaged property to the third party.

4. In response to the abovesaid statement, the respondent Bank submitted that the petitioner can identify the purchaser to sell the mortgaged property and deposit the outstanding due of Rs.7 lakhs, at the time of execution of sale agreement and produce sale agreement along with the aforesaid amount of Rs.7 lakhs to the respondent bank at the time of execution of sale deed in favour of the third party purchaser. In the event of settling the entire outstanding dues, the attachment of mortgaged property will be released in accordance with law. The application of the petitioner, for waiver of penal interest will be considered by the respondent if permissible under law.

5. With the consent of both parties, this Court is inclined to pass the following directions:

(i) The petitioner is directed to identify the purchaser to sell the mortgaged property attached by the respondent Bank and to pay Rs.7,00,000/- (Rupees seven lakhs only) to the respondent Bank within a period of four weeks from the date of receipt of a copy of this order and the petitioner shall also produce copy of the registered sale agreement before the respondent Bank.

(ii) Thereafter, in the event of entire amount

has been settled by the petitioner, within six months, the second respondent Bank shall release the attachment of mortgaged property of the petitioner.

(iii) The petitioner is permitted to submit an application for waiver of penal interest to the respondent Bank within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the respondent bank shall consider the said application, within a period of four weeks thereafter, if permissible under law.

(iv) If the petitioner is failed to comply with the conditions stated supra, the respondent bank is permitted to proceed in accordance with law.

6. Accordingly, both the writ petitions are disposed of with the above directions. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES, NAMAKKAL.
2. THE GENERAL MANAGER, RASIPURAM COOPERATIVE TOWN BANK, RASIPURAM.
3. THE PRINCIPAL DISTRICT JUDGE, NAMAKKAL DISTRICT

+1cc to Mr. L.P.Shanmugasundaram, , Advocate SR.No. 9943

+1 CC TO GOVERNMENT PLEADER SR.NO.9701

+1cc to Mr.S.Doraisamy, Advocate SR.No. 3564

W.P.No.23116 of 2018 &

W.P.No.2837 of 2019

W.M.P. No.26996 of 2018

A.SK(15/03/2019)

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