

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 26666 of 2017
and
W.M.P. 28394 of 2017

M/s.TCM Limited Employee's
Co-operative Thrift and
Credit Society Ltd.,
No.S.M.48, rep. by its Secretary,
V.Chinnusamy,
Gonur Post,Mettur Dam-636 404.

... Petitioner

-Vs-

1. The Deputy Registrar of Cooperatives,
Omalur Region,
Omalur, Salem District.
2. The Cooperative Sub-Registrar,
Field Officer,
Nangavalli Circle,
Nangavalli, Salem Dt.
3. The Management,
TCM Limited,
Post Box No.1,
Mettur Dam-636 404.
4. TCM Limited,
rep. by the Managing Director,
No.54/555, MLRWA No.21,
Elenjickal, Muttathil Lane,
Kadavanthra, Cochin-682 020.
Kerala State.
5. The Presiding Officer,
The Labour Court,
Salem.

6. The Chemical General Labours
Union,
TCM 330, rep. by General Secretary,
Mr.Nallamuthu,
Gonur Post, Mettur Taluk,
Salem District.

(R6 impleaded as per order dated
27.11.2017 in W.M.P. 33564/2017)

7. Travancore Chemical Pothu Thozhilalar
Sangam (Regd. No.330/SLM),
rep. by its Secretary
M.Thirulogasundar,
Gonur P.O., Mettur Dam-636 404.
Salem District.

R7 impleaded as per order dated
17.07.2019 in W.M.P. 964/2018

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent to proceed with the execution petitions pending before him in E.P.Nos.05/2011-2012 and 20/2011-2012 to 94/2011-2012 and further E.P. Nos.1/2013-2014 to 44/2013-2014 by attaching the Debt due from the respondents 3 and 4 to the Members of the Petitioner's society mentioned in the list annexed herewith, who are the petitioners in C.P.No.537 of 2005 pending before the 5th respondent/Labour Court as per Rule 125 of the Tamil Nadu Cooperatives Societies Rules, 1988.

For Petitioner : Mr.P.Rathnavel

For Respondents : Mr.L.P.Shanmugasundaram,
Addl. Govt. Pleader
for R1 & R2

Mr. Thiageswaran for R6

Mr.K.M.Ramesh for R7

O R D E R

This Writ Petition has been filed seeking a direction directing the 2nd respondent to proceed with the execution petitions pending before him in E.P.Nos.05/2011-2012 and 20/2011-2012 to 94/2011-2012 and further E.P. Nos.1/2013-2014 to 44/2013-2014 by attaching the Debt due from the respondents 3 and 4 to the Members of the Petitioner's society mentioned in

the list annexed herewith, who are the petitioners in C.P.No.537 of 2005 pending before the 5th respondent/Labour Court as per Rule 125 of the Tamil Nadu Cooperatives Societies Rules, 1988.

2. The case of the petitioner is that the petitioner is the Secretary of the above stated TCM Limited Employees Cooperative Thrift and Credit Society Ltd. formerly known as Travancore Chemicals and Manufacturing Company Limited Employees Cooperative Thrift and Credit Society Ltd. The employees of the formerly known Travancore Chemicals and Manufacturing Company Limited applied for loan from the society on various dates. The society considered the loan application of the employees and granted loan to 116 employees on various dates for interest. On the agreement entered between the Management of the company and employees, it was agreed that the management would deduct the amount due from the workers wages on monthly basis and remit the same in the society account. An agreement in Form No.28 was executed between the employer and employees in this regard and the company has deducted a sum of Rs.9,61,526.47/- from the employees so far.

3. The petitioner has further averred that the Mettur Unit of TCM Limited Mettur Dam has not worked and the production has come to standstill from the year 2004 due to various reasons. Further, the petitioner understands that the employees have raised industrial dispute by filing a petition under Section 33C (2) of Industrial Disputes Act before the Labour Court, Salem praying to recover a sum of Rs.1,73,83,541-38 from the company. Thereafter, the parties have arrived a settlement under Section 18(1) of the Act and after recording evidence, the Labour Court, Salem has posted the above case for filing compromise memo to 09.10.2017. The 116 employees of the company have to repay the principal loan amount of Rs.47,75,115/- and interest of Rs.51,21,554/- and thus, totally, they have to repay the society a sum of Rs.98,96,669/-. On behalf of the society, the petitioner has filed a petition before the 1st respondent for recovery of amount due under Tamil Nadu Cooperative Society Act against the borrowed employees and the 1st respondent Deputy Registrar has granted decree against the employees on various dates.

4. Thereafter, the petitioner has filed an execution petition before the 1st respondent under Rule 116 of the Tamil Nadu Cooperative Societies Rules, 1988 (hereinafter called as 'Rules') against the Judgment Debtors and the same was numbered by the 1st respondent and forwarded to the 2nd respondent for execution of decree. Though the 2nd respondent received the execution petition has not followed the procedures contemplated under Rule 116 of the Rules, he has approached the 2nd respondent on number of occasions requesting to attach the immovable

properties of the Judgement Debtor. However, the 2nd respondent has not followed the procedures contemplated in the Act and Rules. In view of the above circumstances, the petitioner came to know that the 3rd and 4th respondents have arrived at a settlement under Section 18(1) of the Industrial Disputes Act before the Labour Court, Salem in C.P.No.537 of 2005 and is about to disburse the settlement amount to the employees of company. If the amount is disbursed to the employees of the company, without settling the debt due to the society, the society will not in a position to recover the debt due from the employees, as a result, the society will be put to irreparable loss and hardship. Therefore, the petitioner has filed a petition before the Labour Court praying to implead him as one of the necessary party respondents in the pending petition and also seeking direction to the management to remit the amount due in the petitioner society. But, the Labour Court has returned the petition for not maintainable. As against the said return, the petitioner has filed the present Writ Petition.

5. Mr.P.Rathnavel, learned counsel appearing for the petitioner society would submit that on the date of decree, the total amount due is Rs.57,84,535/- and apart from the decree amount, the petitioner has to pay 15% of interest and 3% of penal interest per annum. The total amount would arrive to Rs.1 crore 23 lakhs. However, the total amount available with the above society is more than Rs.1.5 crores. Unless the company pay the amount to the society, the society will be put to irreparable loss and hardship.

6. Mr.Thiageswaran, learned counsel appearing for the 6th Respondent Employees Union, on instructions, would submit that though the employees suffered huge loss and more than 300 employees waiting for the benefit, which was arrived before the Labour Court under Section 18(1) of Industrial Disputes Act, the total amount available as on date is Rs.1.5 crores and that amount has to be disbursed to 300 employees and even that amount disbursed, they may get only a very meagre amount though they worked more than 20 years. Hence, the learned counsel, on instructions, has further submitted that the petitioner is ready to pay a sum of Rs.57,84,535/- and pray for leniency to the employees.

7. The learned counsel appearing for the Management would submit that the Management is ready to abide for any order passed by this Court. However, the fact remains that the available amount for the employees contribution is only nearly Rs.1.5 crores, out of which, they have to disburse the sum to more than 300 employees.

8. On considering the facts and circumstances, it is seen that the 2nd respondent has passed the decree against the 6th respondent members on 17.01.2006 and thereafter, several litigations in between the 3rd respondent management and the employees and hence, the 3rd respondent Management and the 6th respondent employees have raised a industrial dispute under Section 33C(2) of the Industrial Disputes Act before the Labour Court, Salem. While pending the dispute, the management and the employees have arrived a settlement. In which, the petitioner society filed an impleading petition in order to recover the decree amount, but the fact remains that the impleading petition was dismissed. Against which, the present Writ Petition.

9. On perusal of the entire records, it would reveal that as per the decree, the total amount due is Rs.57,84,535/- together with interest of 15% and 3% of penal interest per annum. In order to resolve the issue in between the 6th respondent employees and the petitioner society, this Court is inclined to pass the following order :-

"The 3rd and 4th respondents are directed to deposit the decree amount of Rs.57,84,535/- to the petitioner society within a period of forty five days from the date of receipt of the copy of this order as full quit without interest and penal interest."

10. With the above direction, the present Writ Petition stands allowed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

rpp

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Registrar of Cooperatives,
Omalur Region,
Omalur, Salem District.
2. The Cooperative Sub-Registrar,
Field Officer,
Nangavalli Circle,
Nangavalli, Salem Dt.

3. The Presiding Officer,
Labour Court, Salem.

+1cc to M/s.Waran & Sairams, Advocates, vide SR.No.71859

+1cc to Mr.L.P.Shanmugasundaram, Advocate, SR.No.71269

+1cc to the Spl.Govt.Pleader, (Co-op), Vide Sr.No.71168

+1cc to Mr.K.M.Ramesh, Advocate, SR.No.70658

+1cc to Mr.P.Rathanavel, Advocate, SR.No.70583

W.P. 26666 of 2017

and

W.M.P. 28394 of 2017

Kak(03.10.2019)