



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (NPD) (MD)No.133 of 2012

and

MP(MD)Nos.1 of 2012 & 6175 of 2017

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The Co-operative Sub Registrar/
Special Officer, A.2617,
Sri Meenakshi and Sivagami Mill,
Employees Thrift and Loan Society Ltd.,
Oomatchikulam, Samayanallur,
Madurai District.

... Petitioner/Respondent/Respondent

Vs.

M/s.Sheelarani Textiles Pvt Ltd.,
Rep by its Managing Director,
R. John Soundarapandian,
No.2, Kirupa Nagar,
Thiruppalai, Madurai.

... 2nd Respondent/Defendant/Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the order dated 15.03.2011 passed in I.A.No.217 of 2010 in CMA(CS).No.... of 2010, on the file of the Principal District Court, Madurai.

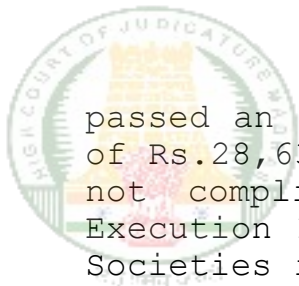
For Petitioner : Mr.P.T.S.Narendravasan
For Respondent : Mr.S.Jesudoss

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below, by allowing an application to condone the delay of 229 days in filing the appeal.

2. The petitioner society is a Thrift and Credit Society, which is registered under the Tamil Nadu Cooperative Societies Act. The Society had given loan in favour of the respondent and the loan amount is deductible on monthly basis from the monthly wages.

3. The respondent had failed to repay back the loan and therefore a dispute was raised under Section 90 of the Co-operative Societies Act. The Deputy Registrar of the Co-operative Societies



passed an award on 16.04.2001 directing the respondent to pay a sum of Rs.28,63,783.27 paise with 19% interest per annum. This award was not complied with and therefore, the petitioner had filed an Execution Petition before the Deputy Registrar of the Co-operative Societies in E.P.No.145/2001.

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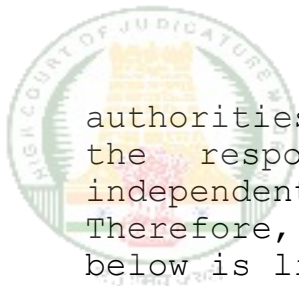
4. The respondent participated in the execution proceedings and he challenged the interest that was awarded by the Deputy Registrar of the Co-operative Societies in the award that was passed under Section 90 of the Co-operative Societies Act. In the mean time, the respondent had filed a writ petition in W.P.No.1027/2005 before this Court and had undertaken to repay the amount of Rs.5,00,000/- within 15.03.2005 to the Society. This undertaking was not complied with. Therefore, the stay granted by this Court was also vacated. The respondent again filed a writ petition in W.P.No.11075/2005 against the petitioner. While the same was pending, the respondent entered into an agreement with the petitioner and gave an assurance that he will repay the entire dues within 31.03.2006. He also make some part payments pursuant to the same. However, the respondent had ultimately, failed to honour the assurance given by him.

5. The respondent contested the Execution proceedings and the attachment order came to be passed by the concerned authority on 06.03.2010 and the same was also published in the news paper.

6. Challenging the said order of attachment, the respondent filed another Writ Petition, before this Court in W.P.(MD). No.3809/2010 and the same was dismissed and as against the same, an appeal in W.A.(MD)No.593/2010 was filed before this Court and the said appeal was also disposed of on 27.09.2010. Since the Writ Petition was not maintainable, this Court had given liberty to the respondent to file an appeal, if so advised, against the attachment order passed in execution proceedings. The respondent proceeded to file an appeal against the attachment order, with a delay of 229 days.

7. The Court below has allowed the application to condone the delay of 229 days and aggrieved by the same, the present petition has been filed before this Court.

8. The learned counsel for the petitioner submitted that the respondent has not questioned the award that was passed against him and what has been challenged is only a consequential order of attachment made in the execution proceedings. The learned counsel further submitted that the respondent was aware about the entire proceedings right from the beginning and therefore, there was absolutely no explanation as to why he did not file the appeal on time. The learned counsel further submitted that the observation made by this Court to the effect that the respondent can file an appeal against the attachment order passed by the concerned



authorities, cannot by itself be a ground to condone the delay and the respondent is duty bound to explain each days delay independently before the Court below and he has failed to do so. Therefore, the learned counsel submitted that the order of the Court below is liable to be set aside.

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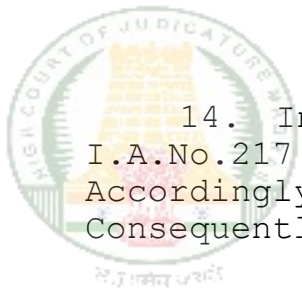
9. The learned counsel for the respondent submitted that the respondent must be given an opportunity to prosecute his appeal remedy. He further submitted that he had challenged the attachment order before this Court and at the stage of appeal, this Court had given a liberty to the respondent to file an appeal before the concerned Court. Therefore, the respondent had gone before the Court below and filed an appeal with a delay of 229 days. The Court below has also condoned the delay and there are no grounds to interfere with the same.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. It is seen from the records that the respondent has successfully dragged on the repayment of loan right from the year 2001 onwards. The repeated assurance given by him was not honoured and the petitioner being a Thrift and Credit society cannot function without loans being repaid back. The award was passed admittedly in the year 2001 and till date, the same has not been challenged and it has also become final. The respondent very well knew that the Writ Petition cannot be maintained before this Court since he had an appellate remedy. However, he has chosen to file a Writ Petition before this Court and the same was also dismissed and confirmed in appeal. This Court has merely observed that the respondent can file an appeal against the award, if so advised. This does not gave a blanket right for the respondent to file an appeal with an enormous delay and get it condoned by using the observation made by this Court.

12. The Court below has not considered the serious objections raised by the petitioner and the Court below had merely relied upon the order passed by this Court and condoned the delay. This Court therefore is of the considered view that the Court below has failed to properly exercise its jurisdiction while considering the condone delay petition. The Court below also failed to take note the conduct of the respondent right through wherein he has only attempted to drag on the proceedings, without repaying the loan amount.

13. In view of the above, this Court finds that the order of the Court below suffers from illegality and the same is liable to be interfered by this Court in exercise of its power under Article 227 of the Constitution of India.



14. In the result, the order passed by the Court below in I.A.No.217 of 2010, dated 15.03.2011 is hereby set aside. Accordingly, this Criminal Revision Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal District Court,
Madurai.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.PT.S.NARENDRAVASAN, Advocate SR-85702.

C.R.P. (NPD) (MD) No.133 of 2012

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