

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.2779 of 2011 and
M.P.No.1 of 2011

1. C.Ramasamy
2. C.Veerammal
3. Kuppayammal

..Petitioners

Vs

1. The Secretary,
Salem District Central Co-Op Bank Ltd.,
Cherry Road,
Salem.
2. The Deputy Registrar of
Cooperative Societies,
Tiruchengode Taluk,
Namakkal District.

3. Pappathi

..Respondents

(Third petitioner and the third respondent brought on record as L/R's of the deceased second appellant viz., C.Veerammal vide order of this Court dated 20.0.2019 made in CMP.No.14298/2019 in CRP No.2779/2011)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the Judgment and decree dated 25.02.2011 made in C.M.A.(CS)

No.11 of 2005 on the file of Principal District Court, Namakkal confirming the order dated 28.07.2004 made in A.R.C. No.01/2004-2005 on the file of the Deputy Registrar of Co-operative Societies, Tiruchengode.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.Ravi Shankar for
Mr.M.R.Raghavan (R1)
Mr.L.P.Shanmugasundaran
Special Government Pleader
(Co-op) (R2)

ORDER

This Civil Revision Petition has been filed against the Judgment and decree dated 25.02.2011 made in C.M.A.(CS) No.11 of 2005 on the file of Principal District Court, Namakkal confirming the order dated 28.07.2004 made in A.R.C. No.01/2004-2005 on the file of the Deputy Registrar of Co-operative Societies, Tiruchengode.

2. The first petitioner is the borrower and the second petitioner is the guarantor. They borrowed a sum of Rs.1,10,000/- from the Co-operative Bank for their business, but not repaid the same. Therefore, a claim petition was preferred under Section 90 (ii) of the Co-operative Societies Act. The second respondent herein dealt with the same and passed an award in A.R.C.

No.01/2004-2005 on 28.07.2004. The said award was challenged by the petitioners herein before the Appellate authority i.e, the District Judge, Namakkal in C.M.A. C.S.No.11/2005. The learned District Judge dismissed the same and confirmed the order of the Arbitrator. Again challenging the said order passed by the Appellate Authority, the petitioners have filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that the award passed by the arbitrator is not in accordance with the rules. He has violated Rule 107 (6) (a) and has not given an opportunity before passing the award. Further, no evidence was recorded and no documents were called for before passing the award. He would further submit that the learned arbitrator has failed to follow the statutory provisions. When the same was challenged by way of an Appeal before the statutory authority, i.e, the learned District Judge, the said statutory authority who as a fact finding Court should have dealt with the matter independently and pass the Judgment. But he has failed to do so and simply has endorsed the view taken by the arbitrator.

3. The learned counsel for the first respondent would submit that the borrowal was admitted and since they have admitted liability they cannot

challenge the award.

4. The learned counsel for the second respondent would submit that based on the admission given by the borrower award has been passed. Therefore there is no violation of the statutory provisions.

5. Heard both sides. Perused the material available on record.

6. A careful reading of the award passed by the second respondent and the Appellate Authority shows that they have not followed the statutory rules especially Rule 107 (6) (a) of the Cooperative Societies Rules. The award and the Judgment does not reveal what are the documents they have perused what are the documents they have called for and whom they have summoned for examination. Merely because borrowal is admitted the creditor and the debtor relationship does not occur. Either the arbitrator or the appellate authority without calling for any document and without recording any evidence and without discussing any document cannot pass award or the Judgment just like that. This Court finds that neither the Appellate authority nor the Arbitrator have followed the statutory provisions. Therefore, they are liable to be set aside.

7. Accordingly, the award passed by the second respondent in A.R.C.No.01/2004-2005 dated 28.07.2004 as well as the Judgment of the Principal District Judge, Namakkal dated 25.02.2011 are set aside and this Civil Revision Petition is allowed. The matter is remitted back to the second respondent to consider the matter afresh, after giving opportunity to both the parties, after examining the necessary persons and call for the records and dispose of the same in accordance with law. However since the matter is pending from 1990, the second respondent Arbitrator is directed to dispose of the matter in accordance with law, after adopting the statutory provisions within a period of one year. No costs. Consequently, connected M.P. is closed.

24.07.2020

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P.VELMURUGAN,J.

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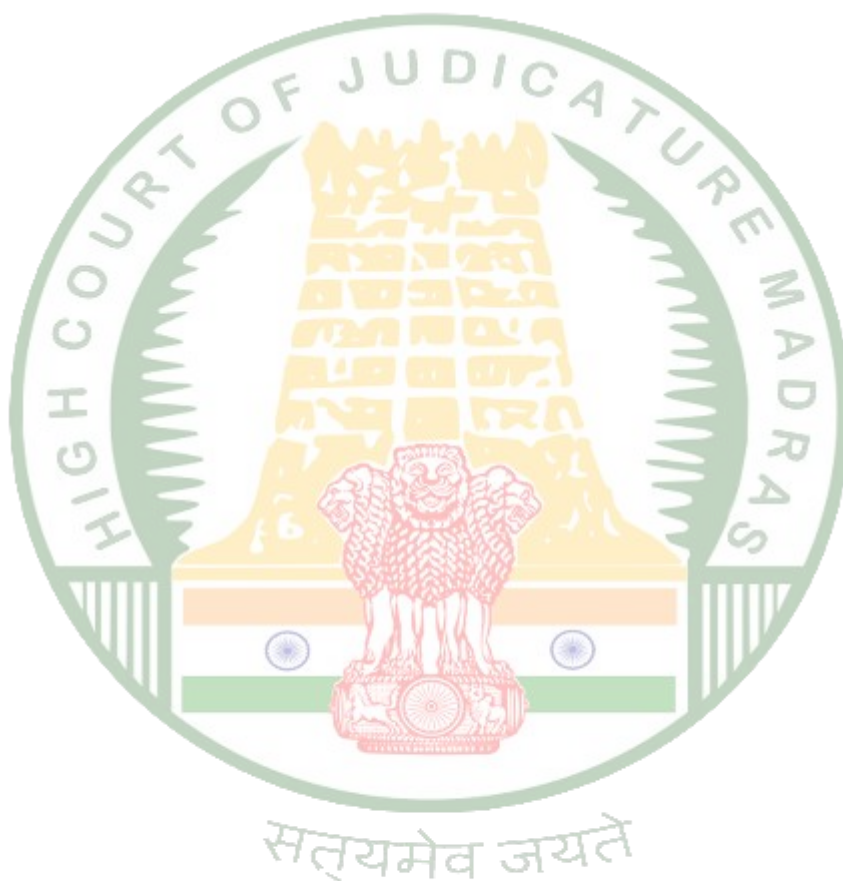
To

1. The Secretary,
Salem District Central Co-Op Bank Ltd.,
Cherry Road,
Salem.
2. The Deputy Registrar of
Cooperative Societies,
Tiruchengode Taluk,
Namakkal District.
3. The Section Officer, V.R. Section, High Court, Madras
4. The Principal District Court, Namakkal.

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