

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2020

PRONOUNCED ON : 14.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4438 of 2012

and

M.P.No.1 of 2012

Dharmapuri Handloom weaver's Cooperative Production
Sales Society Limited.,
No.S-473,
represented by its Administration
Dharmapuri Liquidator of the Society
Mr.Babu, No.52, Weavers Colony
Bye pass road, Dharmapuri. ...Petitioner/Respondent

Vs.

P.Sambantham ...Respondent/
Petitioner

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the order dated 07.12.2011, in REA.No.190 of 2010 in REP.No.37 of 2008 in CTOP.No.3 of 2000, on the file of the learned District Munsif, Dharmapuri.

For Petitioner : Mr.S.Kalyana Raman

For Respondent : Mr.P.Valliappan

ORDER

This Civil Revision Petition has been filed against the order passed by the learned District Munsif, Dharmapuri, in REA.No.190 of 2010 in REP.No.37 of 2008 in CTOP.No.3 of 2000, dated 07.12.2011.

2 The defendant in CTOP.No.23 of 2000, is the revision petitioner herein.

3 Brief facts of the case are as follows:

The respondent herein/plaintiff viz., P.Sambantham has filed the said petition viz., CTOP.No.3 of 2000, before the learned District Munsif, Dharmapuri, under Section 9 of the Tamil Nadu City Tenants Protection Act, against the revision petitioner/Society, seeking protection and also for sale of the petition property in his favour. The said CTOP.No.3 of 2000, was decreed on 01.12.2004. Thereafter, the respondent herein has filed an Execution Petition in REP.No.37 of 2008 on 03.09.2008, before the learned District Munsif, Dharmapuri, wherein, he sought for Execution of the Sale Deed in his favour. Against the same, the revision petitioner/defendant has filed a Rent Control Application in RCA.No.190 of 2010, alleging that the Society was dissolved on 11.07.2008 under Section 137(2)(b) and 138 of the Tamil Nadu Cooperative Societies Act, 1983 and hence, by virtue of Section 141 of the Tamil Nadu Cooperative Societies Act, 1983, there is a bar in continuing the Civil Suit or proceedings without prior permission of the Registrar of Cooperative Societies. The said Rent

Control Application was dismissed and hence, the Civil Revision Petition.

4 Heard the both the counsel and perused the materials placed on record.

5 On a perusal of the records, it is seen that the revision petitioner/Handloom weaver's Cooperative Production Sales Society Limited was registered in the year 1983 and on 11.07.2008 the Society was dissolved under Section 137(2)(b) and 138 of the Tamil Nadu Cooperative Societies Act, 1983. Pursuant to which, one Mr.Babu, was appointed as a Liquidator, Deputy Director of Handloom and Textiles, Salem.

6 A short point which arises for consideration is whether after appointment of Liquidator, without permission of the Registrar can a civil proceedings be instituted or continued under Section 141 of the Tamil Nadu Cooperative Societies Act, 1983, which reads as under:

"Bar of legal proceedings: Save in so far as is expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or cancellation of the Registration of a registered

Society under this Act and when a liquidator has been appointed, no suit or other legal proceeding shall lie or be proceeded with against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the registered society, except by leave of the Registrar"

7 The judgment reported in [1970 (10) MLJ 18] - *[The Thiruchenkattankudi Tenants Co-operative Farming Society by its liquidator Vs. Sri.Redrapathiswaraswami Devasthana, Thiruchankattankudi, by its Hereditary Managing Trustee]*, wherein, this Court has held as follows:

"Madras Co-operative Societies Act (LIII of 1961), Section 89 – Bar of suit under – Scope of – "Touching the affairs of the society" – Meaning of – Co-operative Farming Society in liquidation – Suit for arrears of rent against the society without leave of Registrar – If maintainable section 89 of Madras Co-operative Societies Act bars the institution or continuation of legal proceedings against a registered society when once the society enters upon liquidation. The policy behind the section is the same as the one behind similar provisions in the Companies Act or in law of insolvency. A claim made or which is pending when a society is wound up cannot be proceeded within a Civil Court. The 'affairs of the Society' referred to in the section will embrace also a claim or liability against the society." The said Judgment of our Hon'ble High Court relates to section

18 in of old Act and after amendment Section 141 is applicable. 8. Upon reading of said Judgments a case was proceeded against the society for arrears of rent by Co-operative Society and it was held by the Hon'ble High Court that there is a bar to recover arrears and also held that the affairs of the society referred to will embrace also a claim or liability against the society."

8 "The Hon'ble High Court in Writ Appeal Nos.613 & 614 of 2001, dated 06.07.2011. Upon perusal of the said orders, this Court has also passed an order directing the petitioner to approach the Liquidator to have recourse."

9 On a perusal of the Lower Court order, it seems that the learned District Munsif on erroneous consideration, has dismissed the petition. Admittedly, the Society was dissolved on 11.07.2008 and the Execution Petition was filed on 03.09.2008. In other words execution proceedings have been initiated without the leave of the Court after dissolution of the Society as mentioned above.

10 Taking into consideration the above facts and circumstances, this Court finds that the order passed by the learned District Munsif, in REA.No.190 of 2010 is erroneous and the same is

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set aside and consequently, REP.No.37 of 2008 shall stands
dismissed. It is open to the decree holder to approach the
concerned Authority to get their leave of the Registrar as per the
provisions of the said Act.

11 With the above observations, the Civil Revision Petition
shall stands allowed and the order passed by the learned District
Munsif, Dharmapuri in REA.No.190 of 2010 is hereby set aside and
consequently, order passed in REP.No.37 of 2008 also stands
dismissed. No costs. Consequently, connected Miscellaneous
Petition is closed.

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Index : Yes / No
Internet : Yes

To
The District Munsif, Dharmapuri.

14.02.2020

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Pre-Delivery Order
in
CRP.(NPD).No.4438 of 2012