

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal No.268 of 2020 &
C.M.P.No.4431 of 2020

M.Mangalasamy ...Appellant/Petitioner

Vs

- 1.The Registrar of Co-operative Societies (Housing)
Nandanam, Chennai-35.
- 2.The President,
NN-11, Paramakudi Co-op. Building Society Ltd.,
Paramakudi, Ramnad District. ...Respondents/Respondents

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 27.01.2020 made in W.P.No.8627 of 2016.

Wp.No.8627/2016:- Filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.2683/2015/Sa.Pa/dated 23/02/2016 and quash the same.

For Appellant : Mr.C.Prakasam

For Respondents: Mr.L.P.Shanmughaundaram,
Spl.GP for R-1
Mr.Bala Ramesh, AGP for R2

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The Appellant is a member of the Paramakudi Co-operative Building Society Limited (the Society). He obtained a loan in the year 2001 from the Society. Towards repayment of the loan,

he made part payments from time to time. By demand notice dated 20.03.2015, the Society called upon him to pay a sum of Rs.7,50,595/-. The Appellant challenged the said demand by filing a revision petition before the Registrar of Co-operative Societies (Housing) under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (the Act). The said revision petition was dismissed by order dated 23.02.2016. The said order was challenged by filing W.P. No.8627 of 2016. The Writ Petition was dismissed by order dated 27.01.2020 on the basis that the appellant/petitioner is a chronic defaulter and failed to avail waiver schemes when offered to him. In addition, it was held that he did not participate in the arbitration proceedings but straight away filed a revision petition under Section 153 of the Act. The said order in the writ petition is impugned in this appeal.

2. We heard Mr.C.Prakasam, learned counsel for the appellant; the learned Additional Government Pleader on behalf of the first respondent; and Mr. Bala Ramesh for the second respondent.

3. The learned counsel for the appellant submitted that he had availed a loan of Rs.3,00,000/- from the Society in the year 2001 for the construction of a house. Upon receipt of the above sum, the appellant made repayments from time to time aggregating to a sum of Rs.4.00,000/-. In these circumstances, the appellant was shocked when he was called upon by demand notice dated 20.03.2015 to pay a sum of Rs.7,50,595/- on or before 15.05.2015, failing which he should vacate the house and that the said house would be brought for sale in a public auction. According to the learned counsel, the demand for payment of Rs.7,50,595/- was without any basis and, therefore, the appellant was constrained to file a revision petition under Section 153 of the Act. He further submitted that the said revision petition was rejected without considering the fact that the appellant had repaid a sum of Rs.4,00,000/- and, therefore, the demand for payment of Rs.7,50,595/- was unsustainable. He further contended that the Writ Court erred in concluding that the appellant is a chronic defaulter. As regards the arbitration proceedings, he contended that he did not receive proper notice in such proceedings and, therefore, could not participate in the same.

4. Mr.Bala Ramesh, the learned counsel for the Society made submissions to the contrary on behalf of the first respondent. His first contention was that the appellant was required to repay the sum of Rs.3,00,000/- in equated monthly instalments of Rs.4511.10 p.m. The tenure of the loan was a period of 15 years and the interest rate on the said loan was at the rate of 16.5% p.a. He further submitted that waiver schemes in respect of

penal interest were announced by the Government of Tamil Nadu on more than one occasion and the same scheme was offered to the appellant on certain conditions relating to repayment of the entire dues. The appellant was called upon to avail the benefits of the said scheme and, upon receipt of the notice in connection therewith, he repaid a sum of Rs.1,00,000/- on 29.07.2008 but failed to make further payments by adhering to the conditions imposed.

5. According to the learned counsel, as on 14.03.2016, the appellant is liable to pay an aggregate sum of Rs.10,69,644/- to the second respondent as per the details set out in paragraph-7 of the counter of the second respondent. Therefore, arbitration proceedings were initiated on 20.08.2009 and the appellant was called upon to participate in the said arbitration proceedings. The notice in relation to such proceedings was received by the wife of the appellant. But the appellant failed to participate in the said proceedings. The revision petition was filed by the appellant in these circumstances and the second respondent opposed the petition on the ground that a revision is not maintainable. However, pursuant to orders passed in W.P. No.30085 of 2015, the said petition was considered and rejected on merits by the order dated 20.03.2016. The learned AGP contended that the order in revision and the impugned order in the writ petition are not liable to be interfered with in the facts and circumstances.

6. We heard the learned counsel for the respective parties and also examined the records.

7. From the order dated 23.02.2016, in the review petition, it is clear that the second respondent contended that the amount due from the appellant to the Society, as on 25.06.2015, is a sum of Rs.9,77,585/-. In addition, it was also contended that the appellant did not invoke Section 90 of the Act and instead directly filed a revision petition under Section 153, which is not maintainable.

8. Upon considering the rival contentions, it was concluded, in the revision petition, that the loan amount details, as provided by the Society, were found to be correct upon perusal. This order was examined by the Writ Court and the Writ Court concluded that the appellant is a chronic defaulter and has not made out a case for interference with the order passed by the first respondent. The Writ Court further noted that the appellant did not raise a dispute under Section 90 of the Act and instead filed a revision petition under Section 153 of the Act, which is not maintainable.

9. In the event of a dispute between a member and a co-operative society, the Act provides for dispute resolution through arbitration under Section 90 thereof. The Explanation occurring after Section 90(1)(d) of the Act reads as under:

"Explanation.- For the purposes of this section, a dispute shall include-

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member whether such debt or demand be admitted or not."

In this case, the appellant did not resort to the statutory mechanism to resolve the dispute. On the contrary, the appellant failed to participate in the arbitration proceedings initiated by the Society. The award was made in the arbitration, but the appellant failed to file any appeal as provided under Section 152 of Chapter XVII of the Act. Instead, the appellant filed a revision petition under Section 153 of the Act, which was clearly not maintainable. This is evident from the words "not being a proceeding in respect of which an appeal to the Tribunal is provided by sub-section (1) of Section 152." Although the revision petition was not maintainable, the appellant filed W.P. No.30085 of 2015 before this Court for a Writ of Mandamus to the first respondent to dispose of the revision petition. In the said writ petition, a direction was issued on 23.09.2015. Alleging non-compliance with the said direction, Contempt Petition No.376 of 2016 was filed and, pursuant thereto, the order dated 23.02.2016 was passed by the first respondent after duly considering the submissions of the appellant and the second respondent.

10. The aforesaid legal pursuit by the appellant was, therefore, totally misdirected, nonetheless the learned Single Judge adverted to the facts of the case to hold that the appellant was a chronic defaulter.

11. We find that the learned single Judge duly took note of all these facts before recording the conclusion that the appellant failed to make out a case for interference with the order of the first respondent. The learned single Judge further recorded that the revision petition under Section 153 is not maintainable. The findings recorded by the learned Single Judge were made in a petition where the appellant had himself without any demur subjected himself to the jurisdiction of this Court. Even otherwise, the extraordinary remedy under Article 226 of the Constitution of India having been availed of by the appellant, we see no reason now to entertain this appeal. We do not find any infirmity in the said order especially in the facts and circumstances set out above.

12. Accordingly, this writ appeal is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

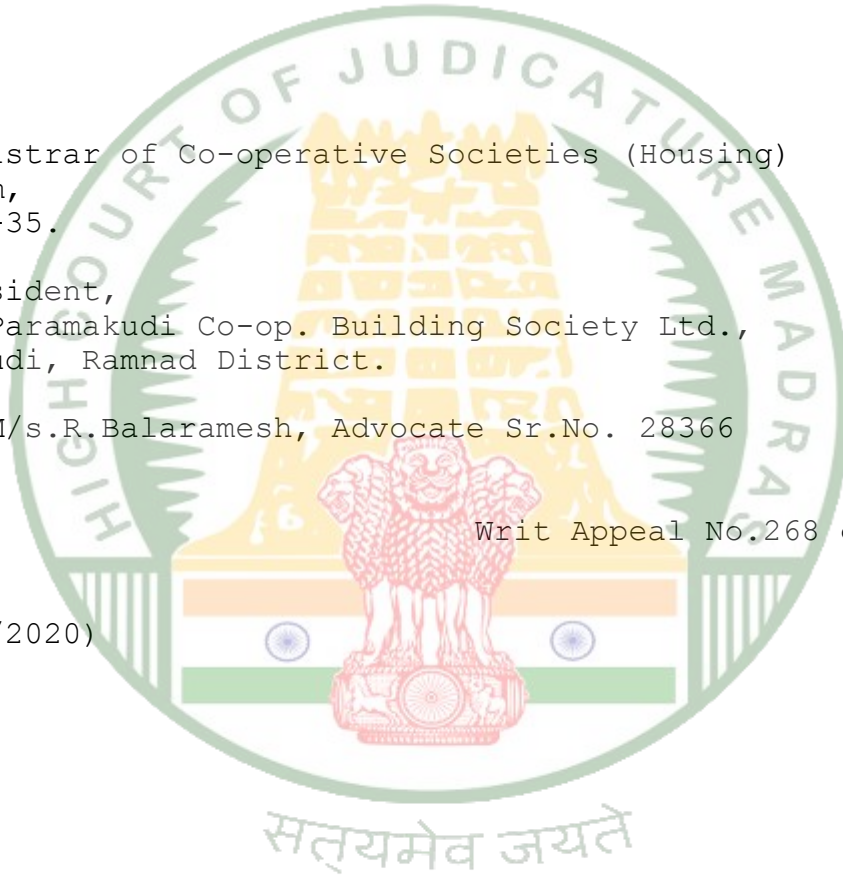
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+1 cc to M/s.R.Balaramesh, Advocate Sr.No. 28366

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EV (CO)
RMP (08/10/2020)



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