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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.02.2021
Pronounced On	11.06.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 10129 of 2016

M/s.L.Indira,
W/o.V.Loganathan ...Petitioner

Vs

1. The Registrar of Co-operative Societies,
 Office of the Registrar of Co-operative Societies,
 No.170, EVR Periyar Road,
 Kilpauk, Chennai - 600 010.

2. The Managing Director,
 Chennai Central Co-operative Bank Ltd.,
 No.215, Prakasam Salai (Broadway)
 Chennai - 600 108.

3. The Branch Manager,
 Chennai Central Co-operative Bank Ltd.,
 Thirumangalam Branch,
 Anna Nagar, Chennai - 600 040.

4. The Assistant Manager,
 Chennai Central Co-operative Bank Ltd.,
 Thirumangalam Branch,
 Anna Nagar, Chennai - 600 040.

5. The Superintendent of Police,
 CCIW, CID,
 Anna Nagar, Chennai - 600 040. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents 2 to 4 herein to forthwith return the petitioner Jewels consisting of 27 items (52 sovereigns), which were pledged under Jewel Loan A/c No.233135193 dated 19.02.2013 with the 3rd Respondent Bank on payment of the balance principal amount along with interest till date.

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For Petitioner : Ms.AL.Gandhimathi

For R1 to R4 : Mr.L.P.Shanmugasundaram

For R5 : Mr.M.D.Ilayaraja
Government Advocate

ORDER

This Writ Petition has been filed for a Mandamus, to direct the second to fourth respondents to forthwith return the Jewels of the petitioner numbering of 27 (purportedly weight of 52 sovereigns) placed against the Jewel Loan A/c. No.233135193 dated 19.02.2013 on payment of the balance principal amount along with interest till date.

2. The petitioner was a member of the third respondent bank and had availed Jewel Loan on 19.02.2013 by pledging some of her Jewels. The gross weight of the Jewels pledged by the petitioner was determined by the third respondent bank at 241 Grams consisting of 27 items at the time when the loan was availed by the petitioner. The total loan taken by the petitioner was for a sum of Rs.4,50,000/-. It was payable within one year together with interest at 13.5% per annum.

3. The petitioner however defaulted in repaying the principal amount and the interest. Therefore, the third respondent bank was constrained to issue notice dated 17.02.2014 and called upon the petitioner to pay the outstanding due against Jewel Loan taken by the petitioner on 19.02.2013. On 29.03.2013, the petitioner made part payment of Rs.61,268/-. The aforesaid amount was appropriated by the third respondent bank towards outstanding interest as per the normal banking practice. Since the petitioner failed to make further payment despite a lapse of loan period on 19.02.2014, a notice dated 29.04.2014 was issued by the Branch Manager of the third respondent bank. The said notice was remained unserved and was returned as unclaimed to the third respondent bank.

4. Thereafter, an approved auctioneer, namely M/s.Bohra's Auctioneer, appointed by the third respondent bank issued notice dated 28.06.2014 to the petitioner. The said notice was also returned as unclaimed. Thereafter, the auctioneer appointed by the third respondent bank issued paper publication dated 12.07.2014 in “Malai Malar” and proposed to conduct auction on 26.07.2014.

5. According to the petitioner, the petitioner received a telephonic call from the fourth respondent, namely the Assistant Manager of the third respondent bank who asked the petitioner to

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repay the balance loan amount together with interest. The petitioner thereafter paid a sum of Rs.50,094/- which has been acknowledged by the fourth respondent, Manager of the third respondent bank. It appears that after acknowledging the aforesaid payment, the second to fourth respondents proceeded to auction the Jewels pledged on 26.07.2014 and recovered a sum of Rs.5,58,628/- proceeds of which exceeded the outstanding due from the petitioner.

6. Under these circumstances, strings of communications were exchanged between the petitioner and the second to fourth respondents. A letter was also addressed to the fifth respondent apart from the letter to the Hon'ble Chief Minister alleging irregularities in the auction conducted by the auctioneer appointed by the respondent bank. The petitioner also filed a Criminal Original Petition before this Court in Crl.O.P.No.4314 of 2015 which came to be disposed by an order dated 20.04.2015.

7. The petitioner has stated that the petitioner had actually pledged 416 grams (52 sovereigns) of Jewelries while taking loan though the third respondent bank acknowledged 241 grams.

8. Opposing this writ petition by the respondents, in the counter, it has been acknowledged that Jewels that were pledged by the petitioner were auctioned for a sum of Rs.5,58,828/- which was recovered and after adjusting the loan due and other charges, a balance amount of Rs.1,40,997/- was kept in suspense account for being paid to the petitioner. It is submitted that despite calling upon the petitioner to receive the aforesaid amount, the petitioner has refused to receive the same and filed frivolous complaint against the bank including Crl.O.P.No.4314 of 2015.

9. It is further submitted that the respondent bank is ready to settle the balance amount of Rs.1,40,997/- which has been kept in the suspense account in the name of the petitioner. It is submitted that, if the petitioner is not satisfied, she is at liberty to raise a complaint under Section 90 of the Tamil Nadu Co-operative Societies Act, 1988 before the Deputy Registrar of Co-operative Societies (Credit), Chennai - 108 who is the Arbitrator as per the Act.

10. Heard the learned counsel for the petitioner and the learned counsel for the first to fourth respondents and the learned Government Advocate for the fifth respondent.

11. The petitioner had availed a sum of Rs.4,40,000/- by pledging her Jewel which was to be repaid within one year/12

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months, i.e., within 19.02.2014, implying an equated monthly instalments of Rs.36,667/- and interest at 13.5% per annum. At the time of taking loan, the third respondent bank had acknowledged having received 241 grams of Jewels numbering in 27 by their receipt dated 19.02.2013. However, the petitioner failed and neglected to repay the loan. Therefore, the third respondent bank was constrained to initiate proceedings and auction the Jewels. However, whether notice was served on the petitioner for the auction held on 26.07.2014 is not discernible from the document filed.

12. The files of the respondents were therefore called for. There are no records to substantiate that the petitioner was issued with the notice of the proposed auction that was purportedly held on 26.07.2014. Thus, there is prima facie irregularity committed in the auction conducted by the second to fourth respondents through their auctioneer.

13. It is further noticed that an auction notice was published in "Malai Malar" dated 12.07.2014 by the second to fourth respondents and proposed the auction to be held on 17.07.2014. However, the auction was conducted on 26.07.2014.

14. Though the petitioner had initially acknowledged having pledged of 241 grams Jewels by a letter dated 22.08.2014, later by a letter dated 27.10.2014, the petitioner has now taken a stand that the petitioner had pledged 52 Sovereigns (416 grams) of Jewels. These are disputed questions of facts which cannot decided by this Court under Article 226 of the Constitution of India.

15. The admitted facts also indicates that the total amount recovered from the auction was Rs.5,58,628/-. Therefore, there is an excess collection of Rs.1,40,997/-. This also indicates that there is irregularity inasmuch as there was no necessity to auction excess Jewels. The Jewels which were pledged should have been auctioned only to the extent to recover the outstanding amount due from the petitioner.

16. Therefore, liberty is also given to the petitioner to approach the Deputy Register of Co-operative Societies (Credit), Chennai – 108 by filing suitable application under Section 90 of the Tamil Nadu Co-operative Societies Act, 1988 within a period of thirty days from the date of receipt of a copy of this order to workout the remedy.

17. On such application being filed by the petitioner, the Deputy Registrar of Co-operative Societies (Credit), Chennai – 108, shall endeavour to dispose the same on merits in accordance with law, within a period of six months from the date of filing

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of the application. It is made clear that in case there is any irregularity in the auction conducted on 26.07.2014, respondents bank shall also take suitable action to recover the amount from the erring officer who was responsible for auctioning the Jewels of the petitioner and suitably compensate the petitioner.

18. The second to fourth respondents are directed to transfer the sum of Rs.1,40,997/- together with normal banking interest rate payable as per the RBI guidelines in force to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

19. Accordingly, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arb
To:
1. The Registrar of Co-operative Societies,
Office of the Registrar of Co-operative Societies,
No.170, EVR Periyar Road,
Kilpauk, Chennai - 600 010.

2. The Managing Director,
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3. The Branch Manager,
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Anna Nagar, Chennai - 600 040.

5. The Superintendent of Police,
CCIW, CID,Anna Nagar, Chennai - 600 040.

6. The Deputy Registrar of Co-operative Societies, (Credit),
Chennai - 108.

+1cc to Mr.A.L.Ganthimathi, Advocate,Sr.27721.

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