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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

W.A.No. 458 of 2021
and
C.M.P. No 1803 of 2021

K.S.Muraliprasad

...Appellant/Petitioner

Vs.

1. The Deputy Registrar(Dairying)
Vellore.
2. The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd.,
3, Chamiers Road, Nandanam,
Chennai 600 035.

....Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order passed by this Court dated 24.09.2020 in W.P.No.12900 of 2020 and allow the Writ Appeal.

Prayer in W.P.No.12900 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to Call for the records relating to the impugned surcharge order issued by the 1st respondent in Tha.The. No. 07 / 2019 dated 21.11.2019 and the subsequent impugned order of Recovery issued by the 2nd respondent in Na.Ka.No. 13215/pa.ku.tho.uoo. 2 / 2019 dated 19.02.2020 served on the petitioner through Email dated 31.03.2020 and to quash the same.

For Appellant : Mr.G. Sankaran

For Respondents : Mr.K.Tippusultan,
Government Advocate for R1
Mr.C.Jaya Prakash for R2



J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN,J)

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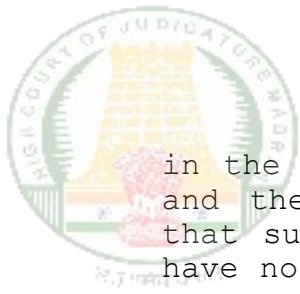
The Writ Appeal is filed against the order dated 24.09.2020 passed in W.P.No.12900 of 2020, by which the learned Single Judge directed that in case the order is not furnished to the Appellant/Writ Petitioner as claimed by him, the Respondents are directed to furnish a copy of the order to enable the petitioner to avail the alternative remedy under the Tamil Nadu Co-operative Societies Act, 1983 (for brevity 'the Act').

2. The main contention of the learned counsel appearing for the Appellant is that when the powers have not been conferred by the Authority in terms of Section 3 of the Act and that the Officer who has initiated the proceedings have not vested with any powers, pursuant to G.O Ms.No.369, Animal Husbandry and Fisheries (MP-II) Department- Conferment of powers of Registrar on certain officers of Dairy Development Department under Tamil Nadu Co-operative Societies Act dated 22.08.1989, wherein the powers under Section 181 of the Act has not been vested with the Deputy Registrar, the proceedings itself is void. He further submitted that even though the alternative remedy is available before the Tribunal, constituted under the Act, till the issue is decided by the Tribunal, recovery may be kept in abeyance, as the Appellant has been foisted against the charge for no fault on him.

3. In reply, the learned counsel appearing for the Respondents submitted that interms of Section 3 of the Act, the Registrar has got all the powers, moreso, in light of Section 81(2) of the Act, the powers can be entrusted to another officer who is empowered to initiate the action under Section 87 of the Act. He further submitted that the Appellant has got alternative remedy and as there are two proceedings one under Section 81 and another under Section 87 of the Act, without exhausting the alternative remedy, the Appellant ought not to have approached this Court.

4. Heard both sides. Perused the materials available on record.

5. Merely because an alternative remedy is available, it is not a bar for this Court to entertain the matter. Though, the Tribunal has powers to pass an interim order of stay/injunction,



in the present case on hand, already recovery has been effected and the main grievance of the Writ Petitioner/ Appellant was that surcharge proceeding which has been initiated against him, have not been communicated to him and without communicating the same, recovery procedure was initiated and both the orders need to be interfered with.

6. The learned Single Judge has rightly observed that the Writ Petitioner has got alternative remedy before the Tribunal. In this context, it would be useful to refer the order of the Hon'ble Supreme Court in M.P.No.665 of 2021 in SMW(C) No.3 of 2020 dated 23.09.2021, with regard to cognizance for extension of limitation and the relevant portion of the order is extracted hereunder:

8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions: -

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings,



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outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

7. Hence, we are of the view that the Writ Petitioner/Appellant shall approach the Tribunal within a period of 30 days from the date of receipt of a copy of this, order by filing necessary application before the Tribunal, which has got powers to pass an interim order of Stay/Injunction. The issue is whether the Registrar has got powers to delegate the subordinates is the matter to be decided factually and this Court is not inclined to grant any relief in the present Appeal with regard to the same. However, the Respondents, being the Co-operative Society shall keep the amount recovered from the Writ Petitioner in a separate account and in case favourable order has been passed in favour of the Appellant, it shall be released to the Appellant.

8. With the aforesaid observation and directions, this Writ Appeal is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

arr



To

1. The Deputy Registrar (Dairying)
Vellore.

2. The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd., 3,
Chamiers Road, Nandanam,
Chennai 600 035.

+1cc to M/s.C.Jayaprakash, Advocate, S.R.No.50470

+1cc to Mr.G.Sankaran, Advocate, S.R.No.50669

+1cc to the Government Pleader, S.R.No.51269

W.A.No. 458 of 2021

BS (CO)
SU (09/12/2021)