

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.(NPD).No. 2575 of 2016

Secretary,
DD9, Uthangarai Agricultural Producers
Co-operative Marketing Society Ltd.,
Uthangarai,
Krishnagiri District. ... Petitioner

Vs.

1.R.Rajalingam
2.The Deputy Registrar of
Co-operative Societies,
Krishnagiri. ... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to allow the Civil Revision Petition and set aside the Judgement and Decree passed in CMA(CS).No.17 of 2015 dated 01.06.2016 on the file of the Co-operative Tribunal (Principal District Judge), Krishnagiri.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Ms.T.Girijen (For R2)
Additional Government Pleader

No Appearance (For R1)

ORDER

This Civil Revision Petition is directed as against the judgement and decree passed in CMA(CS).No.17 of 2015 dated 01.06.2016 on the file of the Co-operative Tribunal (Principal District Judge), Krishnagiri thereby setting aside the order passed by the second respondent herein dated 27.06.2015 thereby decreed the suit for a sum of Rs.5,19,314/- for the purchase of cotton from the petitioner by the first respondent herein.

2. The first respondent is a trader and member of the petitioner's society. He availed credit facility from the petitioner's society and in pursuant to the same, he purchased cotton from the petitioner's society to the tune of Rs.2,75,814/- and thereafter, failed to repay the same. Therefore, the petitioner's society initiated proceedings under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act') before the second respondent. It was decreed by order dated 21.09.1999 for a sum of Rs.5,19,314/- payable by the first respondent herein.

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3. Aggrieved by the same, the first respondent filed appeal in CMA.(CS)No.4 of 2008 before the District Co-operative Tribunal (Principal District Court), Dharmapuri. After hearing the parties, by an order dated

22.01.2009, the same was allowed and the award passed by the second respondent was set aside and the matter was remanded back to the second respondent for fresh disposal after giving opportunity to the first respondent herein.

4. Thereafter, the Dharmapuri District was bifurcated into two districts namely Dharmapuri and Krishnagiri. The petitioner's society is within the jurisdiction of Krishnagiri District. Therefore, there was some delay in taking up the matter for disposal by the second respondent herein. Since the office of the second respondent was also bifurcated and after receipt of the records, the second respondent heard the matter afresh and pass decree to the tune of Rs.5,19,314/- with future interest at the rate of 16% per annum.

5. Aggrieved by the same, the first respondent had filed an appeal in CMA(CS).No.17 of 2015 before the Co-operative Tribunal (Principal District Judge), Krishnagiri. By an order dated 01.06.2016, the court below allowed the appeal on the only ground that the order passed by the second respondent is barred by limitation and it was not passed within a period of 7

years from the date on which directs the second respondent to dispose of the proceedings afresh after giving opportunity. Further, the Co-operative Tribunal (Principal District Judge), Krishnagiri treated the order passed by the second respondent under section 90 of the Act as surcharge proceedings as if passed under Section 87 of the Act, 1983. Therefore, the limitation would not arise in the order passed under Section 90 of the Act.

6. The learned counsel for the petitioner would submit that only because of the bifurcation of district, the entire files would be received by the second respondent and thereafter proceed with the matter and pass such order. He further submitted that admittedly order passed under Section 90 of the Act and it is not a surcharge proceedings. Therefore, no limitation will apply for the order passed under Section 90 of the Act.

7. Even assuming that the limitation applies to the present case, the order passed by the District Co-operative Tribunal, Dharmapuri on 22.01.2009 and the second respondent passed order on 27.06.2015 which is valid and within a period of 7 years. Though notice was served to the first respondent, no one is appeared on behalf of the first respondent by person

or through counsel.

8. Admittedly, the second respondent passed an order under Section 90 of the Act and it is not a surcharge proceedings under Section 87 of the Act. The learned Co-operative Tribunal (Principal District Judge), Krishnagiri construed the fact that the order as if passed under Section 87 of the Act and applied the limitation points and allowed the same.

9. Even assuming that the limitation apply in the order passed by the second respondent as rightly pointed out by the learned counsel for the petitioner, the District Co-operative Tribunal, Dharmapuri remanded the matter to the second respondent for fresh disposal by an order dated 22.01.2009. Thereafter, within a period of 7 years viz., on 27.06.2015, the second respondent passed an award under Section 90 of the Act. Therefore, it is very well within the period of 7 years.

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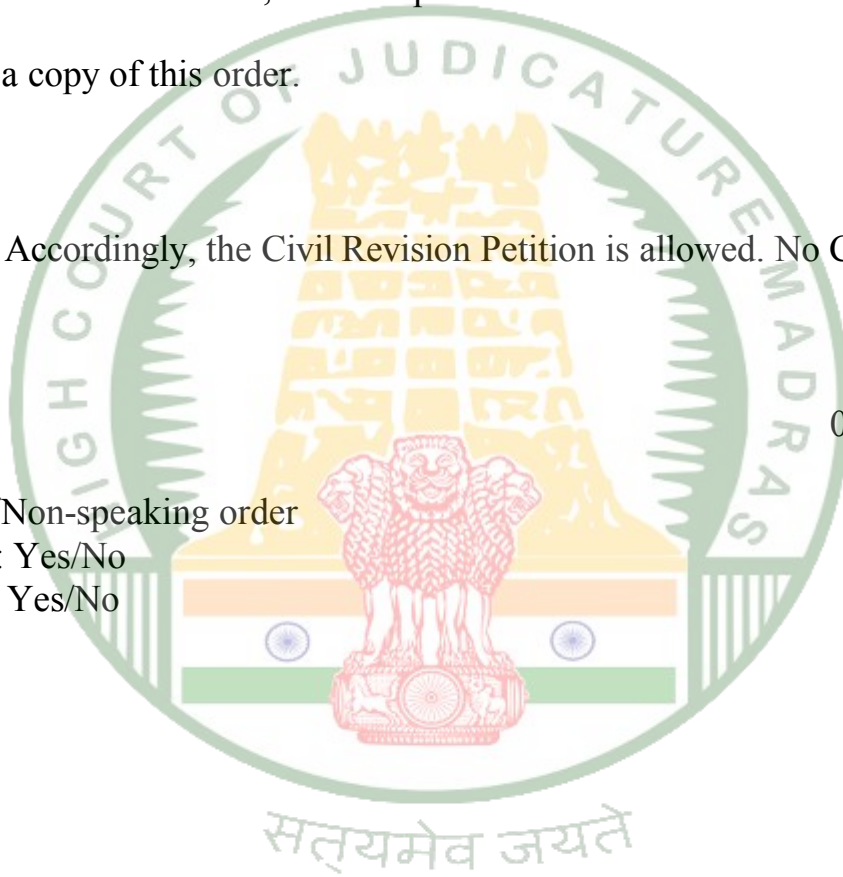
10. In view of the above discussion, the impugned order in

CMA(CS).No.17 of 2015 dated 01.06.2016 on the file of the Co-operative Tribunal (Principal District Judge), Krishnagiri, is liable to be set aside and accordingly set aside. The matter is remanded back to the Co-operative Tribunal (Principal District Judge), Krishnagiri for fresh disposal on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

11. Accordingly, the Civil Revision Petition is allowed. No Costs.

08.02.2021

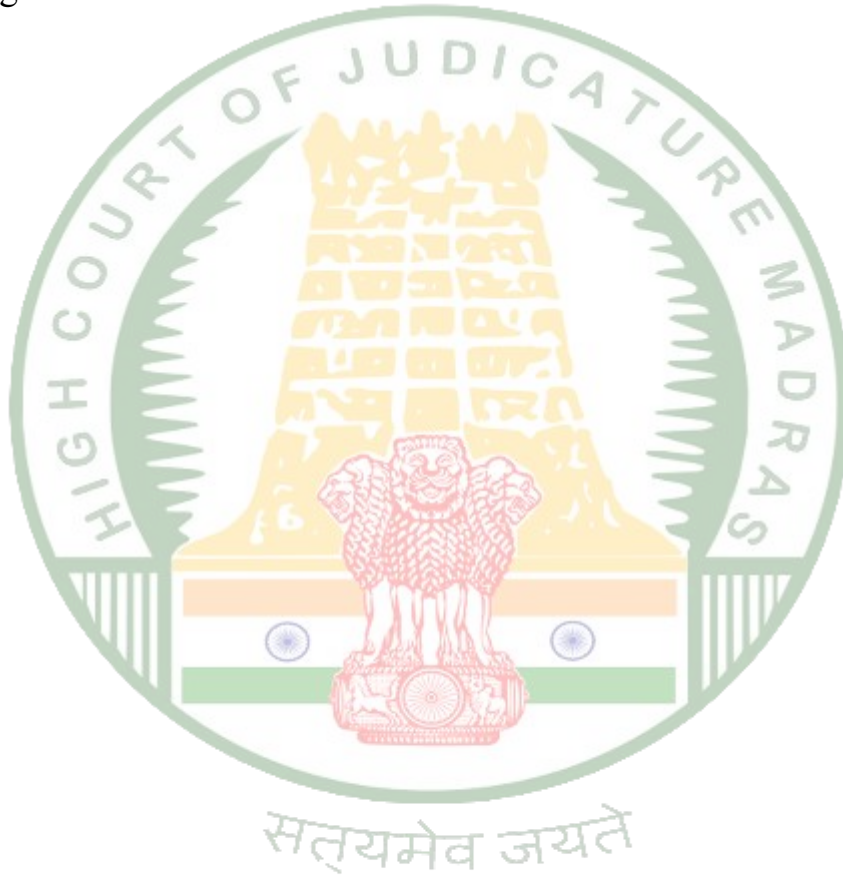
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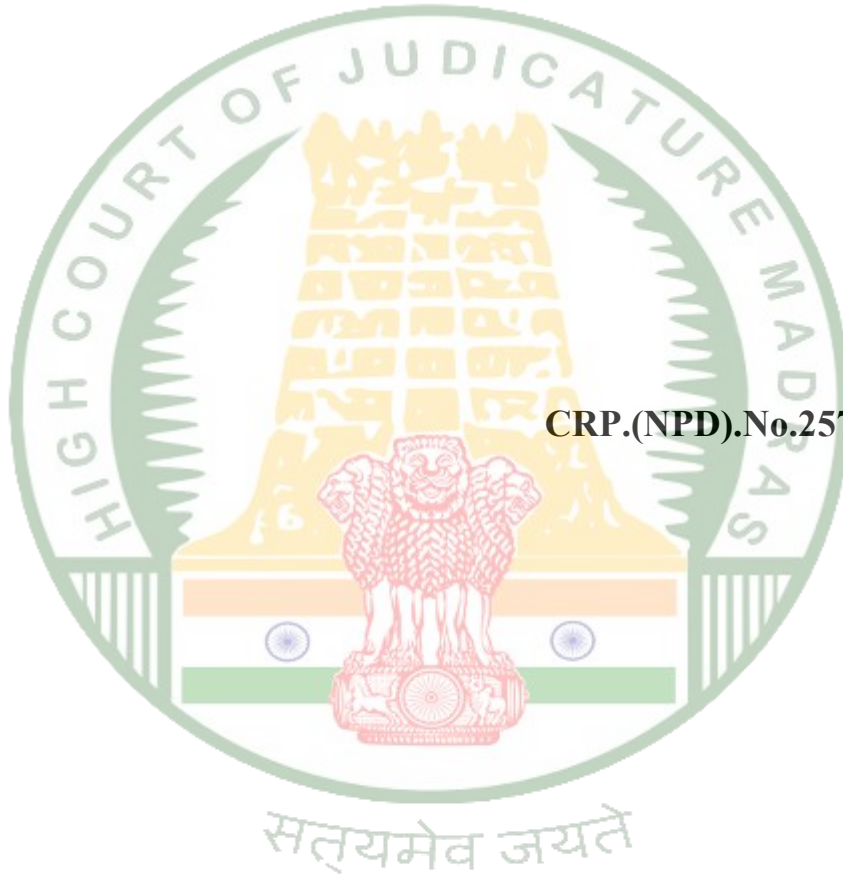
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- 2.The Deputy Registrar of
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G.K.ILANTHIRAIYAN,J.

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