

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3271 of 2017
and C.M.P.No.15270 of 2017

R.Thiruvengadam

T.Vijayalakshmi (Died)

... Petitioner

Vs.

1.The Secretary,
Pennagaram Taluk Co-Op Housing Society,
N.A.H.S.G.55, Pennagaram,
Dharmapuri District.

2.The Co-Op Sub Registrar (Housing),
Dharmapuri.

3.The Sale Officer

/Deputy Registrar Co-Op Office (Housing)

Vellore, Vellore District.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.02.2017 made in C.M.A.(CS).No.04 of 2015 on the file of the

Principal District Court, Dharmapuri, against the award passed in Case No.718/2002-2001 dated 15.09.2015, on the file of the Sub Registrar (Housing), Dharmapuri.

For Petitioner : Mr.S.C.Vishwanth

For Respondents : No appearance (For R1)

Dr.S.Suriya (For R2 & R3)
Government of Counsel (CS)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal order dated 24.02.2017 made in C.M.A.(CS).No.04 of 2015 on the file of the Principal District Court, Dharmapuri, against the award passed in Case No.718/2002-2001 dated 15.09.2015, on the file of the Sub Registrar (Housing), Dharmapuri.

2.Heard the learned counsel appearing for the petitioner as well as Dr.S.Suriya, learned Government of Counsel (CS) appearing on behalf of the respondents 2 and 3 and perused the materials available on record.

Though the learned counsel entered appearance for the 1st respondent, none appeared on behalf of the 1st respondent today.

3.The petitioner is 1st respondent in Arbitration proceedings initiated by the 2nd respondent. From the materials on record, it is seen that the petitioner, while serving as President of the 1st respondent Society, borrowed money and mortgaged his property for himself and on behalf of the minor children. The wife of the petitioner was guarantor for the said amount. The petitioner did not repay the amount borrowed and Arbitration proceedings was initiated against the petitioner and his wife. The 2nd respondent Arbitrator has sent summons to the petitioner on the following dates viz., 01.09.2002, August 2003, 22.05.2004, 10.12.2004, 06.04.2005, 27.07.2005, 15.11.2006, 06.11.2008, 03.03.2015 and 01.09.2015. The petitioner received summons, but did not appear before the Arbitrator. Finally, the petitioner refused to receive summons on 03.03.2015 and on 01.09.2015. The suit summon was returned to the 2nd respondent on 09.09.2015. On such refusal, the 2nd respondent passed an award dated 15.09.2015 and directed the petitioner to pay mortgaged

amount with 15% interest. The petitioner filed C.M.A.(CS).No.04 of 2015 on the file of the Principal District Court, Dharmapuri. In the said C.M.A., the petitioner contended that he had made various payments and 2nd respondent did not give credit to the amounts paid by the petitioner. According to the petitioner, the 2nd respondent did not give sufficient opportunity to him and did not give opportunity to cross-examine the witness. In addition to that, the petitioner raised a plea that his wife, the 2nd respondent in Arbitration proceedings, died on 12.10.2004 and award passed on 15.09.2015 is not maintainable, as the same was passed against the dead person.

4.The learned Judge considered all the contentions made on behalf of the petitioner and dismissed the appeal, holding that the petitioner, being the President of the Society, knowing fully well the rules of the Society, did not inform the death of his wife for more than 11 years. After the death of his wife, the petitioner made payments in the year 2010 and did not inform the death of his wife even at that time. The learned Judge further took note of the fact that the petitioner has not filed any statement

of account or proof for payment of amount, except a receipt for payment made in the year 2010.

5.The contention of the learned counsel appearing for the petitioner that no opportunity was given to him to put forth his case and to cross-examine witness is without merits. The summons were sent to the petitioner on number of occasions and he refused to receive the summons on two occasions viz., on 03.03.2015 and 01.09.2015. Having refused to receive the summons, it is not open to the petitioner to contend that no opportunity was given to him. Further, even though the petitioner claims to have paid various amount, he has not furnished any details of dates and amounts paid by him and has not filed any statement of account. As far as the contention of the petitioner that award passed against the dead person is concerned, the petitioner did not inform the death of his wife for more than 11 years. In any event, he is one of the legal heirs of his wife and already he is on record. For the above reason, the Civil Revision Petition is liable to be dismissed as devoid of merits. The learned counsel appearing for the petitioner submitted that the

Society has waived interest for others and seeks leave of this Court to give a representation to the Society for claiming interest. It is open to the petitioner to give representation to the Society and if representation is given, 2nd respondent-Society is directed to consider the same and pass orders on merits and in accordance with law.

With the above direction, this Civil Revision Petition is dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

27.10.2021

Index :: Yes/No
gsa

To

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Dharmapuri.
2. The Secretary,
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N.A.H.S.G.55, Pennnagaram,
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Dharmapuri.

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V.M.VELUMANI, J.

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