



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.9607 of 2009

and

M.P. (MD) No.1 of 2009

The Special Officer,
Thiruchi District Police Officers' Co-operative
Thrift and Credit Society Ltd.,
Armed Reserve Grounds Complex,
Subramaniapuram, Thiruchy - 20.

... Petitioner

Vs.

1.The Principal District Judge,
District Court Complex,
Thiruchirappally.

2.The Deputy Registrar of Co-operative Societies,
Multi-storied Complex, Khajamalai Main Road,
Thiruchirappally-32.

3.G.Sarangapani (Died)

4.S.Valliammal

5.S.Muthukumar

6.S.Bhuvaneswari

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 1st respondent, in his file C.M.A.[C.S] No:4/2007, and quash the order Dt:31-10-18 and the decree passed therein.

For Petitioner : Mr.S.Seenivasagam

For Respondents : Mrs.S.Srimathy,
Special Government Pleade for R1 & R2.
Mr.Kamalesh for R4 to R6.

ORDER

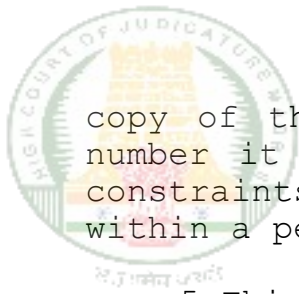
Heard the learned counsel for the writ petitioner and the learned counsel for the respondents.



2. One G.Sarangapani was employed as Secretary in the writ petitioner's society. He reached the age of superannuation some time in the year 1999. Since according to him, his retirement benefits were not properly settled, he raised a dispute under Section 19 of the Tamil Nadu Co-operative Societies Act, 1983, before the Deputy Registrar of Cooperative Society, Tiruchirappalli. The Deputy Registrar rejected the claim of G.Sarangapani on merits. Aggrieved by the award dated 05.01.2006 in ARC No.2004-2005, G.Sarangapani filed an C.M.A.(C.S) No.4 of 2007 before the Principal District Judge, Tiruchirappalli. During the pendency of the appeal, G.Sarangapani passed away and his legal heirs came on record. The Cooperative Tribunal/Principal District Judge, Tiruchirappalli vide order dated 31.01.2008, set aside the award passed by the Deputy Registrar and partly allowed the appeal and directed the employer/society to pay a sum of Rs.81,724/- to the legal heirs of G.Sarangapani with interest at 12% per annum from the date of retirement till date of filing of the claim petition and at 6% per annum from the date of the claim petition to till date of realization. Challenging the said order dated 31.01.2008, the society filed this writ petition.

3. The learned counsel for the petitioner/society pointed out that the claim raised by the erstwhile employee of the society was clearly not maintainable under Section 90 of the Tamilnadu Co-operative Societies Act. In this regard, he placed reliance on the decision of the Hon'ble Supreme Court reported in **AIR 1970 SC 245 (Cooperative Central Bank Ltd., Vs. Additional Industrial Tribunal, Andra Pradesh)**. When this point of jurisdiction pleaded by the petitioner's counsel was put to the learned counsel for the respondents, the learned counsel for the respondents replied that this contention of jurisdiction was never taken before the Tribunal or the authority. I am afraid that this objection does not have much of force. It is well settled that the consent of parties do not confer jurisdiction. Likewise, omission to raise the plea of maintainability will not estop the writ petitioner from raising the said contention before the Writ Court. When the claim raised by G.Sarangapani was not maintainable under Section 90 of the Act, all the subsequent proceedings get clearly vitiated. Therefore, I have no hesitation to set aside the impugned order and allow the writ petition.

4. But the matter cannot rest there. As rightly pointed out by the learned counsel for the private respondents, the cause of action is more than 22 years old and the employee himself is no more and the legal heirs are also senior citizens. Taking note of the special circumstances obtaining in this case, I permit the legal heirs of G.Sarangapani/respondents 4 to 6 to file a claim petition before the jurisdictional Labour Court. If such a claim petition is filed within a period of eight weeks from the date of receipt of a



copy of this order, the Labour Court will entertain the same and number it without reference to limitation or any other procedural constraints. The Labour Court will also dispose of the matter within a period of four months thereafter.

5. This writ petition is allowed with the aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CS-I)

/True copy/

/ /2021
Sub Assistant Registrar(CS-)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal District Judge,
District Court Complex,
Thiruchirapally.
2. The Deputy Registrar of Co-operative Societies,
Multi-storied Complex, Khajamalai Main Road,
Thiruchirappally-32.

+1 CC to M/s.V.G.KAMALESH, Advocate (SR-3896[F] dated 09/02/2021)

+1 CC to M/s.S.SEENIVASAGAM, Advocate (SR-4457[F] dated 11/02/2021)

W.P (MD) No.9607 of 2009
08.02.2021

IAS
PK/27.02.2021 : 3P/5C