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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WRIT PETITION NO.24745 OF 2010
AND M.P.NOS.1&2 OF 2010

A.Siluvaiprakasam

.... Petitioner

-Vs-

1. The Deputy Director of Industries and Commerce (Indl.Coops), CTAL Buildings) Guindy, Chennai 600 032.
2. The Assistant Director of Industries and Commerce (Indl.Coops), District Industries Centre Branch, Ambattur Industrial Estate Chennai 600 058.
3. The Industrial Cooperative Officer (M) Surcharge Officer (U/s.87), O/o The Deputy Director of Industries and Commerce (Indl.Coops), CTAL Bui.dings, Guindy Chennai 600 032.
4. The Swallows Handicrafts Industrial Cooperative Society Ltd., rep.by its Special Officer, Plot No.157/158 Deesiya Nagar, New Washermanpet Chennai - 600 081.

.... Respondents

Prayer :

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned orders passed by the 3rd respondent in her proceedings dated 30.07.1998 communicated only on 02.12.2008 and the consequential order of recovery and attachment of the salary as per the proceedings of the 1st respondent dated 08.03.2010 communicated only on 05.08.2010 and quash the same as unlawful, null and void.



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For Petitioners : Mr.R.Viduthalai, Senior Counsel
for M/s.A.V.Bharathi
For Respondents : Mrs.E.Renganayaki
Additional Government Pleader
-for RR 1 to 4

O R D E R

This writ petition is filed by the petitioner, who was a Special Officer in the fourth respondent Society and retired from service upon superannuation with effect from 28.12.2015. Challenging the order passed under Section 87 of the Tamil Nadu Cooperative Societies Act dated 30.07.1998 and the consequential order of attachment of salary dated 18.03.2010 including the action of the respondents in withholding a total sum of Rs.4,90,326/- which includes the amount from his gratuity also.

2. When the matter was taken up for hearing, this Court posed a question to Mr.R.Viduthalai, learned Senior Counsel appearing on behalf of the petitioner as to the maintainability of the writ petition without filing an appeal under Section 152 of the Tamil Nadu Cooperative Societies Act, it is the submission of the learned Senior Counsel that the order passed by way of surcharge proceedings is dated 30.07.1998, but however was communicated to the petitioner only on 02.12.2008. Therefore, in view of the efflux of a long number of years ie., to say ten years, even if the limitation needs to be taken into account as from the date of communication of the order, the petitioner is virtually deprived of filing an appeal as he could not muster all the evidence which was in his command and recollect all the information at his command at that belated point of time, so as to effectively avail the remedy of appeal in the year 2008 and further submitted that this Court also entertained the writ petition in the year 2010 and at this belated period of time relegating the petitioner to the alternate remedy cannot be appropriate and impressed upon this Court to ignore the alternate remedy available and to deal with the matter on merits.

3. Per contra, Mrs.E.Ranganayaki learned Additional Government Pleader, pointing out to Para 4 at Page 3 of the counter affidavit, would submit that the surcharge order was communicated to the petitioner by proceedings dated 03.12.2004 and it was received by the petitioner in the year 2004 itself. She would further point out sub-clause(3) of Section 152 of Tamil Nadu Cooperative Societies Act wherein it is provided that the period of limitation of 60 days starts from the date of communication of the order and therefore, the petitioner ought



to have filed an appeal within 60 days from 04.12.2004 when the order was communicated to the petitioner and having omitted to file the appeal, the writ petition is not maintainable.

4. To this, by way of reply the learned Senior Counsel would submit that, there are two limbs to the challenge to the impugned order. Even assuming that the surcharge order has attained finality and that the petitioner is liable to pay the surcharge amount of Rs.1,05,220/- it may be seen that it is the discretionary power which is vested in the Registrar to charge interest. However, absolutely without any reasons being adduced, a higher rate of interest is imposed in the impugned proceedings. That apart, even the 18% would have been justified had they recovered the amount in the year 1998 itself. Keeping quiet for a long number of years, even as per the counter, the surcharge order itself was communicated after a lapse of six years and they started recovering the amount after a lapse of ten years and a major portion was again recovered from the gratuity on 05.12.2018. Firstly, it is not at all recoverable from gratuity amount and secondly by charging this exorbitant interest.

5. I have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials placed on record.

6. I am unable to accept the contention of the learned Senior Counsel that the petitioner's right to file the appeal has been taken away on account of non-service of the order within a period of 60 days from the date on which it was passed. As pointed out by the learned Additional Government Pleader, the period of limitation starts from the date of communication. Even accepting the contention of the petitioner that it was served only in the year 2008, the period of limitation would start from that year and therefore it cannot be said that the petitioner was deprived of an opportunity to file the appeal. But however, the learned Senior Counsel has fairly conceded that he is not questioning the merits of the surcharge amount. Now, for consideration of the quantum of interest alone he need not be relegated to alternate remedy. On the other hand, to avoid prejudice to both the parties, the matter may be disposed of by this Court itself regarding the question of interest alone.

7. On this submission, the learned Additional Government Pleader would submit that there is no question of the officials accepting any reduced rates of interest. When this Court posed a question to the respondents as to whether it was justifiable on the part of the respondents to charge interest at the rate of 18% while the petitioner was working in the same Cooperative Society and even according to them six years the order was not



even communicated, for ten years not even steps have been taken to recover the amount, there is no justification forthcoming.

8. Therefore to meet the ends of justice, instead of relegating the petitioner to the alternative remedy of appeal at this distant point of time especially considering the fact that the petitioner is now at 64 years of age, while upholding the order of surcharge, no interest can be charged from the date of the order ie., from 30.07.1998 till date of communication of the order as admitted by the respondents ie., upto 04.12.2004. Even after 04.12.2004, the respondents started effecting recovery only from the year 2010 and there is inaction on their part for about six years and the respondents completed the recovery only in the year 2018. The amount of interest recovered is more than 300% of the principal sum due. Therefore, to balance both the interest of the petitioner as well as that of the respondents, it is ordered that the sum of Rs.1,05,220/- will be payable by the petitioner with interest at the rate of 9% from 05.12.2004. The excess amount recovered / retained shall be refunded to the petitioner within a period of three months from the date of receipt of this order.

9. This writ petition is disposed of on above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Deputy Director of Industries and Commerce (Indl.Coops), CTAL Buildings) Guindy, Chennai 600 032.
2. The Assistant Director of Industries and Commerce (Indl.Coops), District Industries Centre Branch, Ambattur Industrial Estate Chennai 600 058.
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4. The Swallows Handicrafts Industrial
Cooperative Society Ltd., rep.by its
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Deesiya Nagar, New Washermanpet
Chennai - 600 081.

+lcc to M/s.A.V.Bharathi, Advocate, S.R.No.25196
+lcc to the Government Pleader, S.R.No.25482

W.P.No.24745 of 2010

MG (CO)
PM/25/04/2022