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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.3128 of 2012
and
M.P.Nos.1 & 2 of 2012

1.B.Eswari (Deceased)

2.B.Sharmila Devi

3.B.Kavitha

4.B.Kalpana

5.B.Senthil Kumar

.. Petitioners

(P2 to P5 are substituted as Legal heirs of deceased P1 as per the order dated 26.07.2017 made in M.P.No.3/2012 in W.P.No.3128/2012)

Vs.

1. The Deputy Registrar of Cooperative Societies,
Erode Circle, Erode 638 001.

2. The Perundurai Agricultural Producers
Co-operative Marketing Society Ltd.,
Rep. By its Special Officer,
Perundurai 638 052,
Erode District.

3. The District Registrar/
Cooperative Sub Registrar/Sale Officer,
Field Officer/Vellakoil,
C/o.Perundurai Agricultural Producers
Cooperative Marketing Society Ltd.,
Perundurai 638 052, Erode District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd



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respondent dated 20.12.2011 in E.P.No.5/2005-06 Form 7A, quash the same and consequently, forbear the respondents from initiating any recovery proceedings against the petitioner.

For Petitioner : Mr.V.Lakshmi Narayanan
for Mr.S.Mohamed Uduman

For RR1 & 3 : Mr.U.Baranidharan
Additional Government Pleader

For R2 : Mr.L.P.Shamugasundaram

O R D E R

This Writ Petition is filed by the petitioner challenging the sale notice of the 3rd respondent and consequently, forbear the respondents from initiating any recovery proceedings against the petitioner.

2.The 1st petitioner is wife of one M.Balakrishnamurthy and the petitioners 2 to 5 are children of the said M.Balakrishnamurthy. According to the 1st petitioner, arbitration proceedings under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as, 'the Act') was initiated against the said M.Balakrishnamurthy and without giving any notice to him, an exparte award was passed on 31.12.1999. After obtaining details of arbitration award under Right To Information Act on 15.05.2009, M.Balakrishnamurthy filed W.P.No.2787 of 2010, challenging the said award. This Court, by the order dated 23.03.2010, disposed the Writ Petition, directing him to approach the authority under Section 152 of the Act and permitted him to pay a sum of Rs.25,000/- on or before 31.03.2010 & Rs.1,00,000/- on or before 30.04.2010 and further, directed the authority to consider the delay leniently. The said M.Balakrishnamurthy paid a sum of Rs.25,000/- on 30.03.2010, but he could not pay Rs.1,00,000/- within the time limit fixed by this Court. This Court, on his petition in M.P.No.3 of 2010 in W.P.No.2787 of 2010, extended the time for payment till 30.05.2010. In the mean time, he suffered heart ailment and died on 27.12.2010. The 1st petitioner was not aware of any of these proceedings. While so, the respondents brought the property for sale by public auction on 10.02.2012. The 1st petitioner filed the present petition challenging the same, contending that the 2nd respondent obtained exparte award under Section 90 of the Act without notice to her husband viz., M.Balakrishnamurthy. Due to his ailment, her husband could not pay Rs.1,00,000/- as ordered by this Court in the earlier Writ Petition and he died on 27.12.2010, due to heart attack. Pending



Writ Petition, the 1st petitioner also died and her legal heirs were brought on record as petitioners 2 to 5.

3. The learned counsel appearing for the petitioners 2 to 5 submitted that the petitioners 2 to 5 are willing to pay the amount together with 6% interest per annum and prayed for deduction of interest to 6% per annum.

4. Mr. U. Baranidharan, learned Additional Government Pleader appearing for the respondents 1 & 3 and Mr. L. P. Shanmugasundaram, learned counsel appearing for the 2nd respondent separately contended that the 1st petitioner was aware of the proceedings initiated against her husband and the Writ Petition filed by her husband. The said M. Balakrishnamurthy paid only Rs. 25,000/- and failed to pay Rs. 1,00,000/- as per the earlier order of this Court, even after extension of time granted by this Court. As no appeal was filed against the award, the said award has become final. Action of the respondents in bringing the property for sale is valid and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the respondents 1 & 3 as well as the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

6. From the materials on record, it is seen that for the dues of the father of the petitioners 2 to 5, arbitration proceedings was initiated and ex parte award was passed on 31.12.1999. Even though it was claimed that no notice was served on M. Balakrishnamurthy, he came to know about the award and obtained copy of the award on 15.05.2009 and filed W.P. No. 2787 of 2010. In the said Writ Petition, this Court directed him to pay Rs. 1,25,000/- and file an appeal before the authority. He paid Rs. 25,000/- and did not file appeal. In the mean time, he died on 27.12.2010. After his death, when the property was brought to sale in the year 2012, the 1st petitioner, wife of the said M. Balakrishnamurthy has filed the present Writ Petition. Pending Writ Petition, the 1st petitioner died on 24.08.2012. The petitioners 2 to 5, who are the children of the said M. Balakrishnamurthy and 1st petitioner has prayed for reduction of rate of interest and offered to pay the principal amount together with interest at the rate of 6% per annum. The said request is opposed by the learned Additional Government Pleader appearing for the respondents 1 and 3 as well as by the learned counsel appearing for the 2nd respondent. This Court, took into account the fact that M. Balakrishnamurthy and 1st petitioner, parents of the petitioners 2 to 5 died and petitioners 2 to 5 are earnestly willing to settle the amounts due to the 2nd respondent and are praying to settle the amounts due to the 2nd



respondent with reduction of interest to 6% per annum. This Court, in the interest of justice, taking into account the death of the parents of the petitioners 2 to 5, directs the petitioners 2 to 5 to pay the amount together with 6% interest per annum as full and final settlement, less the amount already paid, within a period of twelve weeks from the date of receipt of a copy of this award. On such payment by the petitioners 2 to 5, as directed by this Court, the 2nd respondent is directed to drop the auction proceedings. If the petitioners 2 to 5 fail to pay the amounts within the time limit granted by this Court, it is open to the 2nd respondent to proceed further.

With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Deputy Registrar of Cooperative Societies,
Erode Circle, Erode 638 001.
2. The Special Officer,
Perundurai Agricultural Producers
Co-operative Marketing Society Ltd.,
Perundurai 638 052,
Erode District.
3. The District Registrar/
Cooperative Sub Registrar/Sale Officer,
Field Officer/Vellakoil,
C/o.Perundurai Agricultural Producers
Cooperative Marketing Society Ltd.,
Perundurai 638 052, Erode District.

+2ccs to Mr.S.Mohamed Uduman, Advocate, S.R.No.28863
+1cc to the Government Pleader, S.R.No.29384

W.P.No.3128 of 2012

PM[co]
NSK/20/05/2022