



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.19534 of 2019
and
W.M.P.No.19025 of 2019

C.Yasodhai

.. Petitioner

Vs.

1. The President,
O.N.69-Nagai and Thiruvarur Districts Primary Agricultural
Cooperative Employees thrift and Credit Society Ltd.,
Office at No.25-D, Thirumanjana Veedhi,
Thiruvarur and District.
2. The Cooperative Deputy Registrar Cum Arbitrator Court
Office of the Deputy Registrar of Cooperative Societies,
District Collector office Complex,
Vilamal,
Thiruvarur and District.

3.S.Ganapathi

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the Second Respondent's award bearing its case No.140/2018-2019 and its Loan No.4317 dated 13.07.2018 and quash the same as against the petitioner herein as illegal and against law.

For Petitioner	:	Mr.K.Senthilkumar
For R1	:	Mr.R.Balaramesh
For R2	:	Ms.S.Anitha Special Government Pleader
For R3	:	No appearance



O R D E R

This Writ Petition is filed for issuance of Writ of Certiorari, to call for the records of the 2nd respondent's award bearing its case No.140/2018-2019 and its Loan No.4317 dated 13.07.2018 and quash the same as against the petitioner herein as illegal and against law.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and the learned Special Government Pleader appearing for the 2nd respondent and perused the entire materials on record.

3.The petitioner has come out with the present Writ Petition challenging the award passed under Section 90 of Tamilnadu Cooperative Societies Act, 1983. According to the petitioner, she was working as Saleswoman in ZA-80-Venmani Primary Agricultural Cooperative Credit Society, Venmani, Thevur Post, Kilvalur Taluk, Nagapattinam District. During that time, the 3rd respondent was also working there as Jewel Appraiser and he borrowed a sum of Rs.4,00,000/- (Rupees Four Lakhs Only) from the 1st respondent Society for which the petitioner stood as guarantor. Subsequently, the 3rd respondent did not repay the amount borrowed and the 2nd respondent proceeded further and passed an award.

4.The learned counsel appearing for the 1st respondent submitted that for the petitioner, there is an effective alternate remedy under Section 152 of the Cooperative Societies Act, 1983 before the Cooperative Tribunal. Without availing the alternate remedy, the petitioner has approached this Court and relied on the judgment of First Bench of this Court reported in CDJ 2009 MHC 149, (A.Balaraman & Others Vs. The Deputy Registrar of Co-operative Societies, Thiruvannamalai District & Others). This Court in the said judgment at paragraph Nos.4, 5 & 7 has held as follows:

" ... 4.Learned Judge has not accepted the submissions made by the writ petitioners, and in our view, rightly so. The appellate provision under Section 152 of the said Act has been very widely worded. The said right of appeal has been given from orders passed under various provisions. The appellate provision is very comprehensive in nature. Section 152(1) of the said Act clearly says that any person aggrieved by any decision or award passed or order made or proceedings taken under sub-Section (1) of Section 87, sub-Section



WEB COPY

(2), sub-Section (3) or sub-Section (4) of Section 90, Section 118, Section 119, Section 143, Section 144 or Section 167 may appeal to the Tribunal. The meaning of the word any means all. So, any person who is aggrieved by any of the proceedings mentioned in Section 152(1)(a) of the said Act, can file an appeal. The said appeal is to be heard and disposed of by the Co-operative Tribunal, which consists of a senior District Judge.

5. Therefore, the remedy of the writ petitioners/appellants was to file an appeal before the said high powered Tribunal, which has the trappings of a civil Court. Bypassing the said Tribunal, this writ petition has been filed, which, in our view is totally mis-conceived. It is not only the question of availing the statutory remedy. Here, what is in issue is where the statute is specific and creates a special right which creates a remedy whether for enforcing the said rights, such remedy has to be invoked. Here, the rights and remedies have been granted unto flato.

7. In view of the well-settled legal principle, it is not possible for this Court to take a different view and go against the order passed by the learned Judge of the writ Court. We do not find any error in the judgment of the learned Judge of the writ Court. We make it clear that it is open to the petitioners to file an appeal before the Appellate Tribunal. Since, the Tribunal also has power to consider the prayer for interim protection; it is open to the petitioners to ask for such protection. However, we do not say anything on the merits of the case of the petitioners. We also make it clear that if the Appellate Authority is approached within ten days from the receipt of a copy of this order, the Appellate Authority shall entertain the appeal on file without insisting on the question of limitation since the matter was kept pending in this Court. With these observations, the writ appeal is disposed of. We have not decided anything on merit. All questions are kept



open. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs."

WEB COPY The ratio in the above said judgment is squarely applicable to the facts of the present case.

5. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to file an appeal before the Cooperative Tribunal within a period of three weeks from the date of receipt of a copy of this order. If any such appeal is filed by the petitioner within three weeks, the Tribunal shall entertain the appeal without insisting on the question of limitation, since the matter was kept pending in this Court. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

krk

To

1. The President,
O.N.69-Nagai and Thiruvarur Districts Primary Agricultural
Cooperative Employees Thrift and Credit Society Ltd.,
Office at No.25-D, Thirumanjana Veedhi,
Thiruvarur and District.
2. The Cooperative Deputy Registrar Cum Arbitrator Court
Office of the Deputy Registrar of Cooperative Societies,
District Collector office Complex,
Vilamal, Thiruvarur and District.

+1cc to Government Pleader SR. No.15919
+1cc to Mr.R.Balaramesh, Advocate SR. No.15615
+1cc to Mr.K.Senthilkumar, Advocate SR. No.15268

W.P.No.19534 of 2019

SKM (CO)
PR (04/04/2022)