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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.NO.28621 OF 2019

AND

W.M.P.NOS.28379 & 28381 OF 2019

K.Gunasekaran

.. Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies (Credit),
Kuralagam,
Chennai - 600 108.

2. The Joint Director of Collectorate,
Education,
Chennai Region, Saidapet,
Chennai - 600 015.

3. The President,
Sir, Theagaraya Educational Institutions
Employees Co-operative Thrift and Credit
Society Limited No.X-364,
1045/345, T.H.Road,
Old Washermenpet,
Chennai - 600 021.

4. The Secretary,
Sir Theagaraya College Committee,
345/1047, T.H.Road,
Old Washermenpet,
Chennai - 600 021.

5. S.Santhi

.. 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 on the file of the 1st and 2nd respondents relating to the arbitration award in Claim No.449/2012-2013 dated 12.11.2012 consequently recovery Rc.No.4661/C1/2019 dated 10.09.2019.



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For Petitioner : Mr.R.Chandrasekaran
For RR 1 & 2 : Mr.U.Baranidharan
Additional Government Pleader
For R3 : Mr.V.Kamaraj
for Mr.L.P.Shanmugasundaram
For R4 & R5 : Not Ready in Notice

O R D E R

This Writ Petition is filed challenging the proceedings of the respondents 1 & 2 relating to the arbitration award in Claim No.449/2012-2013 dated 12.11.2012 consequently recovery Rc.No.4661/C1/2019 dated 10.09.2019.

2. According to the petitioner, he is working as Superintendent in the 4th respondent college. While working so, at the request of one A.Selvathurai, husband of 5th respondent, who was working as Laboratory Assistant in the 4th respondent college, the petitioner stood as guarantor for the loan amount of Rs.4,90,400/- (Rupees Four Lakhs Ninety Thousand and Four Hundred Only) borrowed by the said A.Selvathurai on 10.12.2012. Thereafter the said A.Selvathurai was dismissed from the service on 07.05.2012. In view of the dismissal of the said A.Selvathurai, he did not pay the monthly installment for the loan amount borrowed by him. Therefore, the 3rd respondent approached the authorities by initiating arbitration proceedings under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983. The Deputy Registrar of Co-operative Societies (Credit) passed an award dated 12.11.2012, directing the said A.Selvathurai and petitioner to pay a sum of Rs.5,36,223/- (Rupees Five Lakhs Thirty Six Thousand Two Hundred and Twenty Three Only) to the 3rd respondent together with interest at the rate of 15.5% per annum from the date of award till the date of realisation. The 2nd respondent informed the 3rd respondent that after adjusting the Teacher's Provident Fund, the balance amount payable by the said A.Selvathurai would be recovered from the salary of the petitioner. The petitioner has now come out with the present Writ Petition, challenging the award dated 12.11.2012 made in Claim No.449/2012-2013, passed by the Co-operative Sub-Registrar (Arbitrator), Office of the Deputy Registrar of Co-operative Societies (Credit), Chennai and also the communication sent by the 2nd respondent dated 10.09.2019 to the 3rd respondent.

3. The learned counsel appearing for the petitioner submitted that the petitioner is only a guarantor and amounts due to the



3rd respondent must be recovered only from the amounts payable to said A.Selvathurai in respect of his Provident Fund amount and the petitioner is not liable to pay any amount. The learned counsel further submitted that the petitioner is willing to pay the principal amount borrowed by the said A.Selvathurai to the 3rd respondent and prayed for allowing the Writ Petition.

4.Mr.U.Baranidharan, learned Additional Government Pleader appearing for the respondents 1 & 2 submitted that the petitioner in the year 2016 itself, challenged the very same award dated 12.11.2012, made in Claim No.449/2012-2013, passed by the Co-operative Sub-Registrar (Arbitrator), Office of the Deputy Registrar of Co-operative Societies (Credit), Chennai, by filing Writ Petition in W.P.No.35706 of 2016 before this Court and this Court, by the order dated 07.10.2016, dismissed the said Writ Petition by giving liberty to the petitioner to challenge the award by filing appeal under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. Suppressing the same, the petitioner has filed the present Writ Petition. Hence, the present Writ Petition filed by the petitioner is not maintainable and prayed for dismissal of the Writ Petition.

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

6.From the materials on record, it is seen that one A.Selvathurai, who was working as Laboratory Assistant in the 4th respondent college, borrowed a sum of Rs.4,90,400/- (Rupees Four Lakhs Ninety Thousand and Four Hundred Only) from the 3rd respondent society. The petitioner, who was working as Superintendent in the 4th respondent college, stood as guarantor for the amount payable by the said A.Selvathurai, if the said A.Selvathurai fails to re-pay the amount. When the said A.Selvathurai failed to re-pay the amount, the 3rd respondent passed an award dated 12.11.2012 against the said A.Selvathurai and the petitioner. The 3rd respondent is taking steps for recovery of amounts as per the arbitration award. Earlier in the year 2016 itself, the petitioner filed Writ Petition before this Court in W.P.No.35706 of 2016 challenging the arbitration award dated 12.11.2012. This Court by the order dated 07.10.2016, dismissed the said Writ Petition directing the petitioner to avail alternative remedy as provided under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. The petitioner has not filed any appeal as per Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. The said award has become final. The contention of the learned Additional Government Pleader appearing for the respondents 1 & 2 that suppressing the earlier Writ Petition, the petitioner has come out with the present Writ



Petition, is not denied by the learned counsel appearing for the petitioner. The contention of the learned counsel appearing for the petitioner that the petitioner is only a guarantor and therefore, the amount must be recovered only from the Provident Fund amount payable to the said A.Selvathurai and no amount can be recovered from the petitioner, is without merits. As guarantor, the petitioner is jointly liable to pay the amounts borrowed by the said A.Selvathurai as the petitioner stood as guarantor for due repayment. Further, from the communication of the 2nd respondent, it is seen that the Teacher's Provident Fund amount payable to the petitioner would be paid to the 3rd respondent towards amount due and balance amount would be recovered from the salary of the petitioner. The action, thus taken, is valid and legal as the award passed against the said A.Selvathurai and petitioner has become final.

7. For the above reasons, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Deputy Registrar of Co-operative Societies (Credit),
Kuralagam, Chennai - 600 108.
2. The Joint Director of Collectorate,
Education, Chennai Region, Saidapet,
Chennai - 600 015.
3. The President,
Sir, Theagaraya Educational Institutions
Employees Co-operative Thrift and Credit
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4. The Secretary,
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Chennai - 600 021.

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+1cc to Mr.R.Chandrasekaran, Advocate, S.R.No.18758
+1cc to the Government Pleader, S.R.No.19144

W.P.No.28621 of 2019

SSV(CO)
PM/08/04/2022