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W.P.No.30461 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.11.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.30461 of 2022
and WMP Nos.29892 of 2022

O.K.Kumar

... Petitioner

Vs

1. The Deputy Registrar,
Registrar of Co-operative Societies,
Omalur Region, Omalur,
Salem District.
2. The Special Officer,
S.M. 81 Omalur Urban Co-operative Bank,
Mettur Main Road, Omalur, Salem District.
3. The Sale Officer,
O/o. The Deputy Registrar of Cooperative Societies,
Omalur Circle, S 777, Nangavalli PACCS Ltd.,
Nangavalli, Nangavalli (Post) – 636 454
Mettur Taluk, Salem District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to impugned attachment order of 3rd respondent in Ne.Ma.No.3/2019-2020 dated 23.09.2022 and sale notices in Form No.8 & 9



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dated 14.10.2022 and communication dated 26.10.2022 in Na.Ka.No.2681/2009/Sapa issued by the 1st respondent and quash the same and consequentially issue direction directing the respondents to consider the petitioner objection dated 26.09.2022, 18.10.2022 and 09.11.2022 as per Rule 135 of the Tamil Nadu Cooperative Societies Rules.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader – R1

Mr.S.Ravikumar
Special Government Pleader – R2 & R3

ORDER

Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader accepts notice for R1 and Mr.S.Ravikumar, learned Special Government Pleader accepts notice for R2 and R3 and both learned counsel are in possession of necessary facts and materials necessary to enable this Court to take a final view in this matter even at the stage of admission.

2. At the outset, the Court notices that the petitioner has filed this Writ Petition without disclosing relevant and material facts. This aspect of the matter will be elucidated in the paragraphs to follow.

3. The petitioner had served as a Vice President in S.M.81 Omalur Urban Cooperative Bank/R2 and had faced enquiry under Section 81 of the Co-operative Societies Act, 1983 (in short 'Act'). Proceedings were taken in



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terms of Section 87 of the Act that culminated in order dated 23.10.2008, adverse to the petitioner. A statutory appeal was filed under Section 152 of the Act before the Tamil Nadu Cooperative Tribunal that dismisses the same by order dated 26.06.2018. That order was challenged in W.P.No.5177 of 2018 which is pending before this Court.

4. When that matter had come up for admission on 25.02.2019, a learned single Judge of this Court had granted an order of stay conditional upon the petitioner depositing 50% of the amount as stated in the impugned order passed by the Tribunal, within a period of 12 weeks from date of receipt of a copy of that order.

5. When the matter had come up on 25.03.2021, the learned Judge noted that there had been no compliance of order dated 25.02.2019 and hence interim stay granted by this Court stood vacated.

6. It was incumbent upon the petitioner to have made a disclosure about this order and the factum of non-compliance. But there has been a conscious effort to skirt the same. In paragraph 5 of the affidavit filed in support of the Writ Petition, the petitioner merely states that W.P.No.5177 of 2019 has been filed challenging the order passed by the Tribunal and '*the same is still pending consideration*'.



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7. It was the learned counsel for R1 who had circulated a copy of this order, in the absence of which, the bonafies of the petitioner or rather, the lack thereof, and the trajectory of relevant events that have transpired in this matter, would have been entirely unknown to this Court.

8. That apart, a specific query was put to the learned counsel for the petitioner as to whether there had been any attachment of the property in question being the property at New S.No.282/25 Old S.No.54/1 - ad measuring 736 – 3/4 sq.ft. and S.No.282/27 - ad measuring 24 1/2 sq.ft. 164/12 ward, Omalur Town, Omalur Taluk and Salem District, prior to order dated 23.09.2022, which is impugned in this Writ Petition.

9. The categoric response of the learned counsel was in the negative. However, what is relevant to note is that the petitioner had availed a loan from R2 bank that had been discharged in 2021 as per the oral submissions of the learned counsel for the petitioner and thus there is no necessity for the respondents to have attached the property since it was already under mortgage. This aspect of the matter had to be elicited only in the course of the hearing and does not figure in the affidavit filed in support of the Writ Petition.

10. The Court is thus of the unambiguous view that the petitioner has approached this Court with incomplete disclosures and a conscious intention to suppress the facts.



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11. That apart and on merits of the matter, I find that there is no prima facie case that would persuade the Court to entertain this Writ Petition.

Admittedly, W.P.No.5177 of 2019 is pending on the file of the Court where the order passed by the Tribunal is under challenge.

12. The appropriate course of action would be for the petitioner to thus seek relief in that very Writ Petition where relief was sought and granted for a limited period, and thereafter vacated on account of non-compliance of the condition imposed by this Court. It is evidently that it is for the above said reason that the petitioner has chosen to file the present Writ Petition suppressing material facts with an attempt to obtain relief here and now.

13. In light of the discussion as aforesaid and being of the categorical view that the case of the petitioner deserves no consideration by this Court, this Writ Petition is dismissed with costs of Rs.25,000/- (Rupees twenty five thousand only), payable to Cancer Institute, Adayar, Chennai. Connected Miscellaneous Petition is also dismissed.

16.11.2022

Index : Yes
Speaking Order
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Dr.ANITA SUMANTH,J.

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