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CRP.No. 3582 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.No. 3582 of 2017

and

CMP.No. 16860 of 2017

T.Selvaraj

... Petitioner

Versus

1. The Circle Deputy Registrar of
Co-operative Societies,
Mayialaduthurai Circle
Nagapattinam District.

2. The Special Officer
T.917, The Mayialaduthurai Consumers
Co-operative Whole Sale Stores Limited,
Mayialaduthurai
Nagapattinam District.

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 09.06.2017 passed in Co.OP.CMA.No. 6 of 2012 on the file of the District Court, Nagapattinam.

For Petitioner : Mr.R.Murugesan

For Respondents : Mrs.P. Vijaya Devi
Government Advocate

**ORDER**

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This Civil Revision Petition has been filed to set aside the fair and decretal order dated 09.06.2017 passed in Co.OP.CMA.No. 6 of 2012 on the file of the District Court, Nagapattinam.

2. Heard both sides and perused the materials available on record.

3. On a perusal of the records, it reveals that the second respondent/plaintiff filed the suit in O.S.No.667/2004-2005/2002 before the Deputy Registrar, Co-operative Society, (Chippam), Mayiladuthurai, against the petitioner/defendant. The petitioner/defendant was working as Salesman in the Mayialaduthurai Consumers' Co-operative Whole-Sale Stores Limited, Mayialaduthurai, Nagapattinam District. While he was in charge of the Society, as per the audit for the year 2001-2002, a sum of Rs.88,702.50, was found deficit in the stock. After perusing the records, the Deputy Registrar, Co-operative Society, (Chippam), Mayiladuthurai, directed the petitioner/defendant to pay the deficit amount together with interest of Rs.1,14,304.45. In spite of that, no such amount was paid by the petitioner/defendant. Therefore, the matter was referred for Arbitration in ARC.No.667/2004-2005 before the first



respondent/Registrar. Since the dispute was between the employer and the Co-operative Society, based on such reference, the 1st respondent has passed an Award dated 30.01.2006 by directing the petitioner/defendant to pay Rs.1,14,304-45 with interest at the rate of 15%. Aggrieved by the said award, the petitioner/defendant has preferred an appeal under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 and Rule 107 of the Tamil Nadu Co-operative Societies Rules, 1988 before the Sub Registrar, Co-operative Society, Mayiladuthurai in Suit No.667/2004-05 and the same was ordered, by directing the petitioner/defendant to pay Rs.88,802/- together with interest at the rate of 12%. Challenging the order dated 30.01.2012, the petitioner/defendant preferred CMA.No.6 of 2012 before the District Court, Nagapattinam and the same was dismissed by order dated 09.06.2017, confirming the order dated 30.01.2012 in O.S.No.667/2004-2005 passed by the Sub-Registrar, Co-operative Society, Mayiladuthurai. Aggrieved by the said order dated 09.06.2017, the petitioner/defendant has preferred the present Civil Revision Petition.



4. On a further perusal of the impugned order, the suit proceedings were initiated by the first respondent contending that the revision petitioner has shortage of stock deficit, which amounts to Rs.88,702/-, as he was a vegetable salesman in Uzhavar Santhai, Mayiladuthurai, and surcharge proceedings were also initiated against the petitioner/defendant and award has also been passed in ARC.No.667/2004-05, dated 30.01.2006.

5. The contention of the petitioner/defendant is that he has not committed any misappropriation of funds from Uzhavar Santhai, and on the other hand, the alleged charges made by the first respondent are not sustainable, for the reason that the vegetables were destroyed due to natural calamities. Since the vegetables are perishable in nature, there was deficit and loss to the Society for some period, and those facts has been periodically informed to the second respondent/Special Officer from the very beginning by the petitioner/defendant, which was not at all considered. All these facts were not at all taken into consideration by the first respondent erroneously fixed the liability and also initiated Disciplinary Proceedings against him. He was suspended from service on 31.01.2003 and subsequently, he was dismissed from service on



11.08.2009. But the trial Court has failed to appreciate the facts and had erroneously dismissed the said application, by order dated 09.06.2017.

Therefore, he prays to set aside the findings of the trial Court.

6. Today, when the matter is taken up for hearing, the petitioner/defendant who is aged about 72 years, is present. Though he has raised objection before the trial Court regarding the proceedings initiated by the first respondent against the petitioner and he is inclined to settle the issues, but he was unable to settle the matter due to illness.

7. Per contra, the learned Government Advocate appearing for the respondents contended that he has produced a Calculation Memo stating that, as per the Arbitration award (30.01.2012) amount of Rs.88,802/- together with interest at the rate of 12%, a total sum of Rs.1,15,443.25 is payable by the petitioner to the first respondent/Society, but the first respondent demanded a sum of Rs.2,04,245.75 from the petitioner/defendant. After dismissal from service, the gratuity amount exists, based on the Calculation Memo, the first respondent claimed a sum of Rs.75,705/-, but the learned counsel for the petitioner contended that, now the petitioner/defendant was dismissed from service without



any benefits and he is struggling to survive at the age of 72 years and he could not mobilize the amount of Rs.75,705/- and therefore, he prayed that the interest amount may be reduced.

8. On seeing the fact that he was working as Salesman in Uzhavar Santhai, who nearly completed his service for more than 27 years as he was joined service in 1976. As per the submission made by the learned counsel for the petitioner/defendant, he is not having any Disciplinary Proceedings against him and at the end of his service, he has been falsely implicated and surcharge proceedings were also initiated in this case.

9. Considering the age of the petitioner/defendant and his illness, this Court is inclined to reduce the interest from the rate of 12% to 6%. Accordingly, the petitioner/defendant is directed to pay a sum of Rs.1,47,411.50 [Rupees One Lakh Forty Seven Thousand Four Hundred Eleven and Paise Fifty Only] to the first respondent/Society. The petitioner was appointed on 11.10.1976. His Employees Provident Fund amounts to Rs.1,10,000/- which was paid by EPFO directly to the employees, for which no details are available with the stores.



1. Gratuity	:	Rs.1,45,249/-
2. Leave Encashment (201 days)	:	Rs.23115/-

Total	:	1,68,364/-

10. The first respondent is directed to withdraw the said amount Rs.1,47,411.50 from the petitioner's gratuity amount of Rs.1,68,364/- lying with the first respondent/Society. After adjusting the sum of Rs.1,47,411.50, the petitioner is entitled to claim the remaining gratuity amount payable to him.

11. Considering the long service rendered by the petitioner/defendant and taking note of the age and penury situation and also the petitioner has settled the amount, this Court is of the view that if the petitioner submits a representation regarding payment of Gratuity and Pension, the same may be considered by the first respondent/Society in accordance with law. Therefore, the petitioner is directed to submit a representation within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of the representation, the first respondent/Society is directed to consider the same and pass orders in accordance with law.



12. With the above directions, the Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.11.2022

msm

Speaking Order : Yes/No

To

1. The District Court, Nagapattinam.
2. The Circle Deputy Registrar of
Co-operative Societies,
Mayialaduthurai Circle, Nagapattinam District.
3. The Special Officer
T.917, The Mayialaduthurai Consumers
Co-operative Whole Sale Stores Limited,
Mayialaduthurai, Nagapattinam District.
4. The Section Officer, V. R. Section
High Court of Madras.



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T.V.THAMILSELVI, J.

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