



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.3988 of 2022

and

W.M.P.[MD]No.3418 of 2022

S.Hakim

... Petitioner

/Vs./

1.The Regional Deputy Registrar (Housing),
Tiruchirappalli.

2.R-786, Tiruchirappalli Co-operative House
Construction Society Limited,
Rep. by its Secretary,
Thillai Nagar, Tiruchy - 17.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to the order made in Ku.Ni.Ve.Ma.No.81/2018-19 in Na.Ka.No.1005/2018 Sa.Pa.(1) dated 26.11.2018 passed by the 1st respondent, quash the same.

For Petitioner : Mr.P.Arun Jayatram
For Respondents : Mr.P.Thilak Kumar
Government Pleader

ORDER

The petitioner has challenged the impugned order dated 26.11.2018 on the ground that the procedure contemplated under Section 167 (2) of the Tamil Nadu Cooperative Societies Act, 1983, has not been followed, as no prior notice was issued to him, prior to the order of attachment passed under the impugned order. The impugned order dated 26.11.2018 passed under Section 167 (2) of the Tamil Nadu Cooperative Societies Act, 1983, does not refer to any prior notice issued to the petitioner. Section 167 (2) of the Tamil Nadu Cooperative Societies Act, 1983, reads as follows:

"167. Furnishing of security and attachment of property.-

.....

(2) The Registrar may also in the order made under sub-section (1), or by a separate order, direct the conditional attachment of the said property or such



part thereof and such attachment shall have the same effect as if it had been made by a competent civil court. Provided that no order for conditional attachment shall be made under this sub-section unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the registrar, as the case may be."

The aforementioned Section has to be read with Rule 140 of the Tamil Nadu Cooperative Societies Rules, 1988, which reads as follows:

"140. Mode of making attachment before judgement:

(1) Attachment of property under section 167 shall be made in the manner provided in the foregoing rules of this chapter.

(2) Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in the foregoing rules of this chapter.

(3) Where a direction is made for the attachment of any property under sub-rule (1), the Registrar shall order the attachment to be withdrawn.-

(a) when the party concerned furnishes the security required together with the security for the cost of the attachment; or

(b) when the Registrar makes an order under sub-section (1) of section 167 that the party concerned need not repay or restore any money or property or contribute any sum to the assets of the society by way of compensation; or

(c) when the dispute referred to in sub-section (1) of section 90 has been decided against the party at whose instance the attachment was made; or

(d) when the liquidator determines under clause (b) of sub-section (2) of section 139 that no contribution need be made by the party concerned.

(4) Attachment made under sub-rule (1) shall not affect the rights existing prior to the attachment of persons not parties to the proceedings in connection with which the attachment was made, nor bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.



(5) Where property is under attachment by virtue of the provisions of this rule and a decree is subsequently passed against the person whose property is attached, it shall not be necessary upon an application for execution of such decree to apply for re-attachment of the property."

2.As seen from the Rule 140 of the Tamil Nadu Cooperative Societies Rules, 1988, extracted supra, it is made clear that notice to furnish security must be issued at the first instance before ordering attachment. In the case on hand, no such direction as contemplated under Rule 140 of the Tamil Nadu Cooperative Societies Rules, 1988, was issued. Straight away, the first respondent has attached the property belonging to the petitioner.

3.It is also the contention of the petitioner that he is in no way liable for the claim made by the first respondent. He has also become the member of the second respondent only on 08.10.2018. He has purchased the property on 02.09.2011 from the legal heirs of one R.Mariammal.

4.Unless and until the petitioner was heard and a direction was given to the petitioner to furnish security, straight away an order of attachment cannot be passed, which is in violation of Rule 140 of Tamil Nadu Cooperative Societies Rules, 1988. Hence, the impugned order of attachment passed against the petitioner has to be quashed and the matter has to be remanded back for fresh consideration on merits and in accordance with law, in accordance with the procedure contemplated under Section 167 (2) of the Tamil Nadu Cooperative Societies Act, 1983, r/w Rule 140 of the Tamil Nadu Cooperative Societies Rules, 1988.

5.In the result, the impugned order dated 26.11.2018 passed by the first respondent is hereby quashed and the matter is remanded back to the first respondent for fresh consideration and the first respondent shall follow the procedure contemplated under Section 167 (2) of the Tamil Nadu Cooperative Societies Act, 1983, r/w Rule 140 of the Tamil Nadu Cooperative Societies Rules, 1988, before passing an order of attachment against the petitioner's property.

6.With the above direction, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



1.The Regional Deputy Registrar (Housing),
Tiruchirappalli.

2.The Secretary,
R-786, Tiruchirappalli Co-operative House
Construction Society Limited,
Thillai Nagar, Tiruchy - 17.

+1 CC to M/s.SPL GP (SR-12475[F] dated 16/03/2022)

ORDER MADE IN
W.P. [MD]No.3988 of 2022
15.03.2022

PKP/28.03.2022/4P/4C