

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.23582 of 2022

P.Malaiyappan

.. Petitioner

Vs

1.The Deputy Registrar of Co-operative Societies,
O/o.The Deputy Registrar of Co-operative Societies,
Palani,
Dindigul District.

2.A.303, Thennampatti Primary Agricultural
Co-operative Credit Society,
Rep. by its President,
Thennampatti,
Dindigul District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to receive Rs.5,00,000/- towards the liability of the petitioner in pursuance of the surcharge award dated 19.11.2013 passed by the first respondent with interest at the rate of 6% per annum and consequently direct the respondents to release the attachment of immovable properties made in pursuance of the execution petition vide CEP No.1/14-15, dated 17.08.2022.

For Petitioner :Mr.D.Shanmugaraja Sethupathi
For Respondents :Mr.M.Senthil Ayyanar
Government Advocate

ORDER

The petitioner has filed the Writ Petition seeking issuance of a Writ of Mandamus, directing the respondents to receive Rs.5,00,000/- towards the liability of the petitioner in pursuance of the surcharge award dated 19.11.2013 passed by the first respondent with interest at the rate of 6% per annum and consequently direct the respondents to release the attachment of immovable properties made in pursuance of the execution petition vide CEP No.1/14-15, dated 17.08.2022.

2. The learned counsel appearing for the petitioner would submit that the petitioner was working as Secretary in the second respondent society namely A. 303, Thennampatti Primary Agricultural Co-operative Credit Society and one Varadhan had deposited a sum of Rs.5,00,000/- as fixed deposit on 31.08.2007. Similarly, Mr.T.Krishnan also had deposited a sum of Rs.5,00,000/- as fixed deposit on 29.09.2007 in the second respondent society. The petitioner when he was working as Secretary, has committed financial irregularities in respect of the above fixed deposits and he has not credited the above amount in the account of the society and thereby misappropriated the fund. Departmental

enquiry was conducted. On the basis of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act was initiated against him. The first respondent has passed surcharge award dated 19.11.2013 as against him and the Assistant Secretary Mr.S.Alagar Raja holding that both of us are jointly liable to pay sum of Rs.10,00,000/- to the second respondent society with interest at the rate of 18% from the date of alleged irregularities till the realization. In addition to the above surcharge proceeding, the first respondent has initiated yet another surcharge proceeding. The first respondent has passed the award against him and others. The Co-operative Tribunal/Principal District Court, Dindigul has set aside the above surcharge award on the Civil Miscellaneous Appeal filed by him. However, the petitioner has not challenged the surcharge award dated 19.11.2013 passed by the first respondent. The first respondent has now initiated execution proceeding and proposed to conduct auction sale in respect of various properties for executing the award dated 19.11.2013.

3. The learned counsel appearing for the petitioner would submit that without prejudice, he is ready and willing to pay a sum of Rs.5,00,000/- along with interest at the rate of 6% per annum and the same was not considered by

the respondents and hence, the petitioner has filed the present writ petition citing the judgment of this Court in R.Srinivasan-vs-The Special Tribunal for Co-operative Cases, Madurai and others, reported in 1997(2) MLJ 112. In view of the order passed by this Court charging interest at the rate of 18% per annum is not only exorbitant but also arbitrary and prayed this Court to permit him to pay their liability with 6% interest.

4. The learned Government Advocate appearing for the respondents would submit that the petitioner cannot be permitted to pay a sum of Rs. 5,00,000/- and the same will not be accepted by the respondent if he is willing to pay the entire liability then his case will be considered regarding reduction of interest.

5. When the matter was taken up for hearing on 13.10.2022, this Court directed the respondents to get proper calculation regarding interest at the rate 6% interest and 18% and what is the amount to be paid by the petitioner.

6. It is seen from the calculation that for a sum of Rs.5,00,000/- each if 18% interest is fixed the amount would be around Rs.26,04,712/- and if 6% interest is fixed the amount would be around Rs.15,34,904/-.

7. The learned counsel for the petitioner would submit that the petitioner is ready and willing to pay a sum of Rs.15,34,904/- as full quit in order to avoid the further auction proceedings. In order to give quietus to the issue, the respondents are accept the said offer.

8. Considering the above facts, this Court directs the petitioner to pay a sum of Rs.15,34,904/- to the respondents on or before 10.12.2022 and on receipt of the said amount, the respondents are directed to release the properties of the petitioner which have been attached through the attachment proceedings after making proper entry to the Register. Failure to pay the said amount, the authorities are at liberty to proceed further.

9. With the above observations and direction, the writ petition stands disposed of. No costs.

Index :Yes/No
Internet :Yes/No
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18.10.2022

To

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V.BHAVANI SUBBAROYAN, J.

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