



W.P(MD)No.26065 of 2022

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DATED : 06.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26065 of 2022

and

W.M.P.(MD)Nos.20194 and 20195 of 2022

S.Murugan

... Petitioner

Vs.

- 1.The Deputy Registrar of Co-operative Societies,
Cheran Mahadevi Circle,
Chern Mahadevi Post,
Tirunelveli District.
- 2.The Co-Operative Sub Registrar/
Filed Officer, Valliyoor,
O/o. the Deputy Registrar of Co-Operative Societies,
Cheran Mahadevi Circle,
Cheran Mahadevi Post,
Tirunelveli District.
- 3.The Secretary,
T.A.102, Indian Space research Organization Propulsion
Complex Empoloyes Thrift and Co-Operative Society Ltd.,
Mahendragiri – 627 133, Tirunelveli District.
4. B.Annathurai
- 5.The Senior Administrative Officer,
Indian Space Research Organization,
ISRO Propulsion Complex,
Mahendragiri – 627 133,



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Raadhapuram Taluk,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in Na.Ka.2659/2021 Sa.Pa, dated 15.09.2022 and quash the same as illegal and unconstitutional, and consequently direct the 3rd respondent to recover the loan due amount from the 4th respondent alone as per the proceedings in Na.Ka.2659/2021 Sa.Pa dated 26.10.2022 issued by the 1st respondent herein.

For Petitioner : Mr.T.Sundaravadanam

For Respondents : Mr.S.RA.Ramachandaran,
Addl. Govt. Pleader for R1 to R3.
Mrs.L.Victoria Gowri,
Assistant Solicitor General for R5.
No appearance for R4.

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the respondents 1 to 3 and the learned Additional Solicitor General for the fifth respondent. Though the fourth respondent has been served and his name is printed in the cause list, he has not chosen to enter appearance.



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2.The facts of this are fairly simple. The fourth respondent as well as the writ petitioner are employees of ISRO. When the fourth respondent approached the third respondent society for personal loan on 07.12.2015, the loan amount of Rs.7,00,000/- was sanctioned and the amount was also disbursed. The writ petitioner herein signed the loan application as surety. The fourth respondent committed default. That led to initiation of arbitration proceeding under Section 90 of the Tamilnadu Cooperative Societies Act, 1983. The award was passed on 11.01.2019. The borrower figured as the first respondent while the petitioner/surety figured as the second respondent. The petitioner for reasons best known did not question the award dated 11.01.2019 made in A.R.C.No.275 of 2018-2019 passed by the second respondent. The said award came to be enforced as against the writ petitioner. The petitioner's salary came under attachment. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner pointed out that the fourth respondent was transferred from Triunelveli to Gujarat but the fourth respondent did not join in the transferred place. He continues to reside in the quarters of the fifth respondent. According to the petitioner, the fourth



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respondent is well settled in life and instead of proceeding against him, the third respondent society is unfairly targeting the petitioner.

4.Though the contentions advanced by the learned counsel for the petitioner evoke my sympathy, I cannot grant relief because they are without any legal basis. It is well settled that the borrower as well as the surety are co-equally liable to clear the loan liability. The creditor cannot be compelled to exhaust his remedy first against the principal borrower and then only proceed against the surety. Law does not impose any such obligation on the creditor. On the other hand, the surety is at liberty to proceed against the principal borrower, if the surety is compelled to liquidate the liability. I am therefore not inclined to interfere with the impugned order passed by the first respondent on 15.09.2022. The interim stay earlier granted stands vacated.

5.At the same time, the matter cannot rest there. The third respondent is none other than the cooperative thrift society formed for the welfare of the employee working in the fifth respondent organization. In the very nature of things, the management also has a duty in the matter. My attention is drawn to Form No.28 signed by the borrower in favour pay disbursing officer. The fifth respondent is therefore directed to furnish the service particulars regarding the



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fourth respondent to the third respondent. The fifth respondent is directed to send a communication to the writ petitioner setting out the following particulars:-

(a) whether the fourth respondent has been suspended from service and if so, whether subsistence allowance is being paid.

(b) if the fourth respondent is no longer an employee working in the fifth respondent unit, then the fifth respondent shall make it clear as to how the fourth respondent is allowed to continue to occupy the quarters.

6.It is open to the petitioner herein to furnish the property details of the fourth respondent to the third respondent. Thereupon, the third respondent will submit a proper attachment application before the first respondent. The first respondent is directed to act thereon and proceed against the immovable properties of the fourth respondent.

7.It is well settled that if the petitioner is made it to bear the portion of the loan of the liability of the fourth respondent in the meanwhile, the petitioner will be at liberty to proceed against the fourth respondent for recovering whatever amount that was recovered from his salary. The direction given to the fifth respondent will be complied with within a period of two weeks from the



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date of receipt of a copy of this order. The third respondent is directed to act on the details furnished by the petitioner within a period of two weeks from the date of receipt of a copy of this order and if the details furnished by the writ petitioner through the third respondent are in order, the first respondent will act immediately thereon.

8. With these directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.12.2022

Index : Yes / No
Internet : Yes/ No
ias

To:

1. The District Collector,
District Collectorate Campus,
Tiruchirappalli District.
2. The District Revenue Officer,
District Collectorate Campus,
Tiruchirappalli District.
3. The Revenue Divisional Officer,
Revenue Divisional Office,
Tiruchirappalli District.



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4. The Block Development Officer,
Anthanallur Panchayat Union,
Anthanallur, Srirangam Taluk,
Tiruchirappalli District.
5. The Tahsildar,
Srirangaim Taluk,
Tiruchirappalli District.
6. The Panchayat President,
Thirupparaithurai Panchayat Office,
Srirangam Taluk,
Tiruchirappalli District.
7. The Village Administrative Officer,
Thirupparithurai Village,
Srirangam Taluk,
Tiruchirappalli District.



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G.R.SWAMINATHAN, J.

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