



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

C O R A M

THE HONOURABLE MRS.JUSTICE BHAVANI SUBBAROYAN

C.R.P.Nos.1036 & 1054 of 2023
and C.M.P.No.7581 of 2023

1.J.Vasanth
2.J.Maheswaran
3.J.Jayakumar

... Petitioners in both the C.R.Ps

Vs.

1.The Deputy Registrar,
Co-operative Society Sub Registrar (Credit),
Kuralagam, N.S.C.Bose Road,
Chennai – 108.

... Respondent in C.R.P.1036 of 2023

1.The Co-operaqtive Sub Registrar/ Executive Officer,
Saidapet Co-operative Bank,
Chennai – 12.

... Respondent in C.R.P.1054 of 2023

2.The Managing Director,
Saidapet Co-operative Bank Ltd.,
G-619, No.41, Karaneswarar Kovil Street,
Saidapet, Chennai – 15.



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3.The Sale Officer,
Saidapet Co-operative Bank Ltd.,
G-619, No.41, Karaneswarar Kovil Street,
Saidapet, Chennai – 15.

... Respondents in both the C.R.Ps.

PRAYER in C.R.P.No.1036 of 2023:-Civil Revision Petition filed under Article 227 of the Constitution of India against fair and decreetal order dated 27.01.2023 passed in C.M.A.No.15 of 2015 on the file of the Special Tribunal for Co-operative Cases, Chennai cum Chief Judge, Court of Small Causes, Chennai.

PRAYER in C.R.P.No.1054 of 2023:-Civil Revision Petition filed under Article 227 of the Constitution of India against fair and decreetal order dated 27.01.2023 passed in C.M.A.No.18 of 2015 on the file of the Special Tribunal for Co-operative Cases, Chennai cum Chief Judge, Court of Small Causes, Chennai pursuant to the award dated 23.01.2003 in A.R.C. No.816/02-03 passed by the 1st respondent herein.

In both the C.R.Ps

For Petitioner : Mr.C.R.Prasanan

For R1 : Mr.S.P.Karthick



Government Advocate

For R2 : Mr.M.S.Palanisamy

For R3 : No appearance

COMMON ORDER

The petitioners have preferred these Civil Revision Petitions, challenging the judgment and decree dated 27.01.2023 in C.M.A Nos.15 18 of 2015 on the file of the Special Tribunal for Co-operative cases, Chennai.

2. The case of the petitioners in C.R.P.No.1036 of 2023 is that they have file civil miscellaneous petition challenging the proceedings initiated under the sale notice dated 03.08.2015 issued under Form 8 and 9 of the Tamil Nadu Co-operative Societies Act, 1983 fixing the sale to be conducted on 23.09.2015. The claim of the petitioners is that they were not aware of the proceedings for the sale and the sale notice fixing the auction to held on 23.09.2015, as the second respondent initiated proceedings for sale without issuing a notice of demand as required under Rule 119 of Tamil Nadu



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Co-operative Societies Rules, 1988 and no copy of award or decree passed by the first respondent were served on to the petitioners.

3. The case of the petitioners in C.R.P.No.1054 of 2023 is that they have challenged the proceedings intitaded under the Award in A.R.C No.816/02-03, dated 23.01.2003 and no copy of award or decree passed by the Arbitrator were served on to the petitioners.

4. The Tribunal had remanded the matter back and the petitioners/appellants were given an opportunity to discharge the entire loan liabilty with the interest accrued within a period of two months failing which the respondents can conduct public auction the realize the dues, aggrieved by the judgment the petitioners has filed this present revision petition.

5. Heard Mr.C.R.Prasanan, learned counsel for the petitioners and



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Mr.S.P.Karthick, learned Government Advocate for the 1st respondent and

Mr.M.S.Palanisamy, learned counsel appearing for the 2nd respondent.

6. The learned counsel for the petitioners would submit that from 24.03.2003 onwards, on several occasions they have paid various amounts to the second respondent society, and the same was accepted by the respondent society and have credited the amount to the loan account. It was on 03.08.2015 and 04.09.2015, when the petitioners have seen the news paper publication regarding the sale notice have approached the staffs of the respondent society and enquired whether the sale notice was issued without passing of any award and thereafter came to know that an award was passed in the year 2003 and thereafter, sought for the award from the respondents. It is also submitted that no demand notice were served on to the petitioners by the respondents, and it is seen in the Pass Book issued by the second respondent, that an amount of Rs.7,88,163/- had been paid by the petitioners and that if the



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amount paid is properly appropriated towards principal and interest in equal
ration there may not be much amount to be repaid by the petitioners herein,
but however, the finding of the Tribunal that they have paid only Rs.90,000/- is
also erroneous.

7. The learned counsel appearing for the petitioner would submit that
decision of the Tribunal is materially irregular and in error of jurisdiction and
being sustainable in law as well as the decision of the Arbitrator is also erroneous
in law. Further the learned counsel would submit that at any point of time, there
was no service of summons or notices upon the petitioner to appear for enquiry
into the award proceedings, which is required under Chapter IX Rule 111 of
Tamil Nadu Cooperative Societies Rules 1988 and the award copy was also not
served on them. Therefore, the learned counsel would submit that the Tribunal
failed to consider this important aspect.

8. The learned counsel would submit that the Tribunal by allowing



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one application directing the Arbitrator to produce the original documents failing which adverse inference would be drawn against the Arbitrator, however, the Arbitrator did not produce any records, which ought to have drawn adverse inference against the respondents and the findings of the Tribunal that the records produced by the Arbitrator is erroneous on the face of the record. Further, the learned counsel would submit that there was no reference copy enclosed with the alleged summons produced by the second respondent as required under Rule 11(2) of the Societies Rules 1988.

9. The learned counsel would submit that the deposition alleged to have been given by Jayamani had some sought of manipulation with regard to year and does not match with the signature in the award proceedings, which is evident from the records produced by the second respondent, which should not have been relied upon by the cooperative Tribunal. Therefore, the learned counsel would submit that the Tribunal ought to have seen that the award is liable



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to be set aside on the ground of non-service of notice in the award proceedings on the petitioners and also to set aside the sale notice issued as the same was not communicated with the petitioners.

10. Countering his arguments the learned counsel for the respondents would submit that the creditor the Co-operative Bank, Saidapet is not a party to the the relief prayed in the CMA and without the presence of the bank who is the creditor and decree holder. Such an appeal in which the decree holder is not made a party cannot be maintained under law. It is further submitted that the appellants and their deceased father P.Jayarnani were present before the arbitrator and did not contest the case. The plea of the appellants that, no notice was served on them before passing the award cannot be taken into consideration when their father had participated in the arbitral proceedings, and the copy of the award was also served on to the petitioners/appellants.



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11. It is further submitted that the second petitioner in a letter dated 20.10.2014 to the first respondent had in detail described the history of the case, and in the same letter he had also admitted to discuss about the repayment, as he want to derive the benefit from the loan and interest waiver scheme promulgated by a Government Order by the Government of Tamilnadu. The second petitioner herein under the instructions from the first respondent had paid a sum of Rs.90,000/-on three different dates. Further the respondent had given a reply dated 3.11.2014 directing the second petitioner to repay the loan amount due on or before 31.12.2014.

12. It is submitted that the alleged claim of the petitioners that they have paid Rs.7,88,163/- are false, as the petitioners were visiting the office of the respondents on several occasions and had paid amounts right from 24.03.2003, the date of mortgage. The 2nd petitioner after having admitted his knowledge of the award / decree in ARC.No.816/02-03 dated



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23.01.2003 and after having paid Rs.90,000/-. The loan amount due had to be recovered and since the execution petition for recovery is pending in C.E.P.

No.62/04-05 from 2005. The bank had to take steps to recover the same and for which auction notices were also served on the petitioners and the date of auction was also fixed.

13. It is submitted that when the petitioners and their deceased father were well aware of the award passed the petitioners cannot any more plead their ignorance, as they were unaware of the award passed or about the repayment. Hence, seeks the indulgence of this court to dismiss the revision petition.

14. Heard the rival submissions of the learned counsels appearing for their respective parties and perused the materials available on record.

15. It is an admitted fact that the father of the petitioners had



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borrowed money from the respondent bank and had failed to repay the same, but it is also seen that the petitioners had repaid a sum Rs.7,68,006/- as interest accrued on the principal amount on different occasions on several requests by the respondent bank. When the father of the petitioners had participated in the arbitral proceedings, now cannot be heard to say that they were unaware of the arbitral award, and they were not served with any sale notice.

16. When there is no dispute as to the amount borrowed from the respondent bank, the petitioners are entitled to settle the outstanding dues as the learned tribunal has passed orders directing the petitioners to discharge the loan liability. I am also of the view that the petitioners are entitled to repay the balance amount. Taking into consideration that the loan was availed in the year 2001, by their father and has failed to repay the same during his lifetime. For which an arbitral award was passed in the year 2003, seeking to repay the



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amount even after such an award is passed, the petitioners had failed to repay

the same.

17. Taking into account the above facts and circumstances of the case, the petitioners had already repaid a sum of Rs.7,68,006/-. Noting the date of the award i.e., on 23.01.2003 till the date of filing this civil revision petition i.e., on 31.08.2023, the total number of days amounts to 7526 and this court is inclined to grant 10% of interest for the 7526 days. The above said amount which had already been repaid by the petitioners is deducted from the outstanding amount of Rs.13,56,671/- and on the tune of other charges Rs.1,04,360/- is added and therefore the total amount payable by the petitioners amounts to Rs.6,93,025/-. Such an amount shall be payable by the petitioners on or before 31.01.2024.



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18. Based on the above terms these Civil Revision petitions are

disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2023

Index: Yes/No

Speaking: Order/Non Speaking Order

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To

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V.BHAVANI SUBBAROYAN., J.

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