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Cont.P.No.2246 of 2022 and Rev.Aplw.No.15 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Cont.P.No.2246 of 2022 and Rev.Aplw.No.15 of 2023

Contempt Petition No.2246 of 2022:

R.Gurusamy

.. Petitioner

Vs.

Kathamuthu

.. Respondent

Prayer: Petition filed under Section 11 of Contempt of Court Act, to punish the Respondent for committing wilful disobedience of the order passed by this Court in W.P.No.13496 of 2022 dated 07.06.2022.

For Petitioner : M/s.K.Prabhakaran

For Respondent : Mr.U.Bharanidharan

Review Application No.15 of 2023:

The Secretary,
Primary Agricultural Co-operative Credit Society,
Kannamoochi,
Mettur Taluk,
Salem District.

.. Applicant

Vs.



1.R.Gurusamy

2.The Registrar of Co-operative Society,
Dhossapuram, Chetpet,
Chennai.

3.The Registrar of Co-operative Society,
All Primary Agricultural Co-operative Credit Society,
District Collectorate Office,
Salem-1.

4.The Sub-Registrar Co-operative Society,
Primary Agricultural Co-operative Credit Society,
Omalur, Omalur Taluk, Salem District.

.. Respondents

Prayer: Review Application filed under Order XLI Rule 1 read with Section 114 of CPC, against the order dated 07.06.2022 passed in W.P.No.13496 of 2022.

For Petitioner	: Mr.U.Bharanidharan
For R1	: Mr.K.Prabhakaran
For RR 2 to 5	: Mr.G.Ameedius
	Government Advocate

COMMON ORDER

By this common order, both the contempt petition and review petition are being disposed.



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2. This contempt petition arises out of alleged disobedience of this Court's order dated 07.06.2022 in W.P.No.13496 of 2022. The Review Application has been filed to review the same order. The Review Application has been filed by the Secretary, Primary Agricultural Co-operative Society, who is the respondent in the above contempt petition and the writ petition.

3. By the order dated 07.06.2022, W.P.No.13496 of 2022 was disposed with the following observation:-

“3. Considering the above, this Court directs the fifth respondent to consider and pass appropriate orders and take steps to return the originals of the title deed of the property which was given as a security for the loan obtained by the petitioner's father in the year 2002. This exercise shall be carried out by the fifth respondent within a period of four weeks from the date of receipt of a copy of this order.

This writ petition stands disposed of in terms of the above observations. No costs.”.

4. On behalf of the contempt petitioner, it is submitted that the order has not been complied with. It is submitted that despite the order, the respondent/ review applicant has not returned the property document No.434/1884 dated 29/03/1984 registered before the file of SRO, Mettur



which was mortgaged vide Mortgage Deed dated 25.07.2002 vide Doc.No.378 of 2002 before the SRO, Mettur.

5. The fact on record indicates that the contempt petitioner appears to have made an endorsement in the Loan Register having received the original Document No.434 of 1984 dated 29.03.1984. After the loan was discharged by the petitioner on 19.07.2017, Mortgage Deed vide Document No.419 of 2002 dated 25.07.2002 was also cancelled and cancellation of charge was also registered as document No.4631 of 2021 on the file of SRO, Mettur on 14.12.2021. The respondent/review applicant has also issued a discharge receipt dated 14.12.2021 to the petitioner. Thus, the mortgage and loan stood cancelled and discharged.

6. It is the case of the petitioner that at the time of registration of discharge certificate vide document No.4631 of 2021 on the file of SRO, Mettur, a question about original of Document No. 434 of 1984 dated 29.03.1984 was raised. The then Secretary of respondent/review applicant Society however issued letter dated 14.03.2021 stating that the original was kept in the District office / Head office and that the same will be returned to the contempt petitioner.



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7.The fact remains that the mortgage that was registered on 25.07.2002 vide Document No419 of 2002 has been cancelled. However, Original of Document No.434 of 1984 dated 29.03.1984 is not available with the contempt petitioner and therefore, the contempt petitioner asked the respondent / review applicant to return the same.

8.The respondent/review applicant relied on the endorsement of the petitioner in the Register maintained by it, wherein the petitioner has acknowledged as having received the documents with the following endorsement:-

“இக்கடன் தீர்த்து கிரைய பத்திரம் அடமான கடன் பத்திரம் மற்றும் இதர ஆவணங்கள் பெற்றுக் கொண்டேன்.”

9. Respondent/ review applicant has reiterated that the document has been handed over to the petitioner by the then Secretary of respondent/ review applicant Society as early as 19.07.2017. It is submitted that the contempt petitioner sent a letter for first time on 11.01.2022 after the loan was treated as having discharged on 14.12.2021 by the respondent/ review applicant Society.



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10.A reading of the documents that have been filed in the contempt petition and review application indicates that the document No.434 of 1984 dated 29.03.1984 which was handed over to the Society at the time of loan that was sanctioned by the society on 25.07.2002 was not returned to the petitioner's father after the loan was repaid on 19.07.2017. The petitioner's father died on 19.01.2020. After the amount was repaid on 19.07.2017, the petitioner approached the Society for cancellation of the loan and cancellation of the mortgage deed, which was also acceded to as stated above. The extract of the Loan Register maintained by the society indicates that the petitioner has signed the register perhaps without receiving the Original Document No.434 of 1984 dated 29.03.1984, which was obtained at the time of sanction of the loan on 25.07.2002.

11.The respondent/review applicant has not filed any document to show that the document was at the District Office and was sent to the local branch for being returned to the petitioner. It appears that the contempt petitioner must have made the endorsement during 2021, with the view to ensure that the Mortgage Deed Document No.419 of 2002 dated 25.07.2002 was cancelled as the loan was repaid on 19.07.2017. The fact



that remains is that the document is not available either with the contempt petitioner or with the respondent / review applicant Society as otherwise the petitioner would not have approached this Court on an earlier occasion or filed appeal or would not have sent representations to the officers of the said Cooperative Society or to the officers of the Society including the Chief Minister's office. The document which is untraceable cannot be handed over and therefore, the only option available to the contempt petitioner and the respondent/review applicant is to ensure that the petitioner is able to file appropriate application for obtaining the duplicate copy of the missing document No.434 of 1984 dated 29.03.1984.

12.The respondent/review applicant has to give a certificate to the contempt petitioner that the document was not traceable. The contempt petitioner has already filed Police complaint and obtained CSR No.12 of 2022. It is open to the contempt petitioner to get the non-traceable certificate from the jurisdictional Police Station in time and thereafter proceed to obtain a duplicate copy of the Document No.434 of 1984 dated 29.03.1984.



13. To secure the interest the contempt petitioner/respondent shall effect Paper Publication to the effect that the document was not traceable.

14. To balance the interest of either parties, this contempt petition is dismissed and the review application is disposed of by recalling the order by directing the respondent/review applicant to issue to the petitioner that Document No.434 of 1984 was not traceable. The petitioner may take suitable steps for obtaining the duplicate copy of the same after following necessary procedure and practice in connection with lost document. Such certificate shall be issued by the Review Applicant / Respondent to the contempt petitioner within a period of four weeks from the date of receipt of a copy of this order.

15. In the result, the contempt petition stands closed and the order dated 07.06.2022 in W.P.No.13496 of 2022 is recalled and the review application is disposed of in terms of the above direction. No costs.

03.07.2023

kkd / krk

Index : Yes / No

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Neutral Citation : Yes / No



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C.SARAVANAN, J.

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