



CRP (MD) No.521 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	17.08.2023
Pronounced on	13.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.521 of 2021
and
C.M.P(MD)No.2770 of 2021

R.Angusamy

... Revision Petitioner

Versus

V.Chinnandi

... Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order made in C.M.A(CS)No.1 of 2018 dated 25.02.2020 on the file of the Principal District Court (FAC), Theni reversing the order made in A.R.G.No.3496/2004-2005 on the file of the Co-operative Sub Registrar (Housing), Uthamapalayam.

For Revision Petitioner : Mr.S.Kumar

For Respondent : Ms.M.Nila



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ORDER

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This Civil Revision Petition is preferred as against the order made in C.M.A(CS)No.1 of 2018 dated 25.02.2020 on the file of the Principal District Munsif Court (FAC), Theni reversing the order made in A.R.G.No.3496/2004-2005 on the file of the Co-operative Sub Registrar (Housing), Uthamapalayam.

2. According to the Revision Petitioner, the Respondent failed to pay the entire loan amount and wrongly claimed benefit under G.O.(MS)No. 113 Housing and Urban Development Department, dated 20.05.2008. It is submitted that according to the Government Order, the Respondent ought to have paid the default loan amount on or before 30.09.2008, then only he is entitled to get benefit of the said Government Order. The Respondent failed to prove that he has paid the entire loan amount and he is entitled for the benefit of G.O.(MS)No.113. The Respondent inspite of sufficient opportunities given to him to defend his case, miserably failed to contest his case before the Arbitrator. Hence, an award has been passed against the Respondent.



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3. The learned counsel appearing for the Revision Petitioner would submit that the order of the District Consumer Forum will not take away the power of Arbitrator under Section 90 of Tamil Nadu Co-operative Societies Act and the power conferred under statute is an independent power. However, the Appellate Court erroneously held that the Arbitrator has nullified the order of the District Consumer Forum and imposed the cost on the Revision Petitioner who performed his official duty and the Revision Petitioner had no personal vengeance or motive against the Respondent. He would submit that the findings rendered in the consumer proceedings relates to the deficiency of service whereas the arbitration proceedings relates to the recovery of loan due from the member. The Appellate Court failed to take note of the fact that the Respondent has not proved that he has paid the entire loan amount and entitled for the benefit of G.O.(MS)No.113. Since the Appellate Court has not gone into the core issue of payment of loan amount by the Respondent, the Revision Petitioner has approached this Court to set aside the order made in C.M.A(CS)No.1 of 2018, dated 25.02.2020 on the file of the Principal District Court (FAC), Theni reversing the order made in



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A.R.G.No.3496/2004-2005 on the file of the Co-operative Sub Registrar
(Housing), Uthamapalayam.

4. On the other hand, the learned counsel appearing for the Respondent would submit that the order passed by the Sub-Registrar as against law and when the entire loan amount was discharged and the District consumer forum in C.C.No.118 of 2010 had specifically held that the entire loan was discharged, the order passed by the Sub-Registrar suppressing the warrant issued by the District Consumer Forum in E.A.No.15 of 2015 as against the Respondent is against the provisions of the statute and amounts to contempt and abuse of process of law. The Sub-Registrar suppressing the documents produced by the Respondent inspite of the fact that the same was produced through registered post have passed an *ex parte* order without considering the above documents. Hence, he filed the appeal in C.M.A(CS)No.1 of 2018 before the Principal District Judge (FAC), Theni against the order passed by the Deputy Registrar of Co-operative Society, Uthamapalayam in A.R.G.No.3496/2004-2005, dated 19.12.2017. The Appellate Court dealt with the matter in detail and came to the conclusion



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that the order passed by the Sub-Registrar, Uthamapalayam has violated the entire procedure established under law and the proceedings in D.R.No.6 of 2018 is an abuse of process of law and since the Revision Petitioner who had taken the proceedings from District Forum to National Commission and would also failed in the Civil Court proceedings and made the Respondent to run from pillar to post and made him to face number of litigation should be compensated by way of cost in terms of Section 162 of Tamil Nadu Co-operative Societies Act. Accordingly, the Appellate Court set aside the order passed by the Sub-Registrar of Co-operative Societies with a cost of Rs. 50,000/- payable by the Revision Petitioner's Co-operative Societies. Therefore, there is no infirmity or perversity found in the order passed by the Appellate Court which calls for interference.

5. Heard on both sides and perused the records.

6. The C.M.A.(CS)No.1 of 2018 is directed against the order passed by the Deputy Registrar of Co-operative Society under Section 152 of Tamil Nadu Co-operative Societies Act passing an award in terms of Section



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90 of Tamil Nadu Co-operative Societies Act. The fact of the case is that the Respondent originally borrowed a sum of Rs.1,50,000/- from the Revision Petitioner's Society and he paid the amount of Rs.1,88,750/- and had no dues according to him. Therefore, the Respondent has no liability to pay the amount to the Revision Petitioner's Society. But the Respondent has received a notice for payment of Rs.1,03,445/-. Hence, the Respondent approached the Revision Petitioner's Society for redressal of his grievances but it was not heard. Hence, the Respondent approached the District Consumer Forum, Theni for ventilating his grievances by saying that the act of the Revision Petitioner amounts to deficiency in service. Further case of the Respondent is that the Consumer Forum has passed an award to the effect that there is no default amount and that the entire loan amount was discharged. In the above proceedings, the Deputy Registrar of Co-operative Society was arrayed as Respondent. The said order was challenged before the Tamil Nadu State Consumer Commission by the Revision Petitioner and the Hon'ble State Commission, Madurai Bench by its order dated 10.07.2017 dismissed the application for condonation of delay in filing the appeal in C.M.P.No.243 of 2015 in FASR No.340/2015. Aggrieved by this, the Revision Petitioner



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approached the Hon'ble National Commission at New Delhi which dismissed the Revision Petition filed by the Revision Petitioner in R.P.No.3809 of 2017.

The said order has become final and merged with the order passed by the District Consumer Forum. However, the Revision Petitioner again approached the learned District Munsif, Uthamapalayam in O.S.No.33 of 2018 for declaring the order passed by the District Consumer Forum, Theni in C.C.No.118 of 2018 which was confirmed by the Hon'ble National Commission as null and void. However, the said suit plaint was rejected by the learned District Munsif, Uthamapalayam in pursuance to the order in I.A.No.513 of 2018 dated 25.01.2019. At that stage, the Sub-Registrar has passed an award against the Respondent. Aggrieved by this, the Respondent filed an appeal in C.M.A.(CS)No.1 of 2018. The learned Principal District Judge, Theni allowed the said appeal by setting aside the order passed by the Sub-Registrar, Uthamapalayam against which the present Revision is preferred.

7. According to the Revision Petitioner, the Respondent failed to establish that he had paid the entire loan amount liable to be paid to the



Society and then only he can get the benefit of G.O.(MS)No.113. The Appellate Court without considering the above facts imposed cost on the Revision Petitioner who performed his official duty and had no personal vengeance against the Respondent. Hence, the order passed by the Appellate Court is liable to be set aside. The District Consumer Forum held that there is no default amount to be paid by the Respondent and the entire loan amount was satisfied and the same was confirmed by the State and National Commission. The Sub-Registrar of Co-operative Society has no *locus standi* to pass an award against the Respondent directing him to pay the loan amount. Though, the learned counsel appearing for the Revision Petitioner would contend that only the condone delay application was dismissed by the State Commission and confirmed by the National Commission and no order was passed on merits which cannot be accepted. When an application for condonation of delay is dismissed, the same will merge with the original proceedings.

8. The Trial Court after taking into consideration of the attitude of the Revision Petitioner for harassing the Respondent by making him to



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face number of litigation has rightly imposed cost of Rs.50,000/- payable to the Respondent by the Revision Petitioner. Therefore, no perversity is found in the order passed by the Appellate Court. Hence, the above Civil Revision Petition is devoid of merits.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

. 12.2023

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Index: Yes/No

Speaking Order : Yes/No

To

- 1.The Principal District Court (FAC),
Theni
- 2.The Co-operative Sub Registrar (Housing),
Uthamapalayam.

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K.GOVINDARAJAN THILAKAVADI,J.

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PRE- DELIVERY ORDER MADE IN

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13.12.2023

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