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WP(MD)Nos.4428 to 4430 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)Nos.4428 to 4430 of 2014
and
WMP(MD)Nod.1,1,1,2,2 and 2 of 2014

S.V.Subbaraj	... Petitioner in WP(MD)No.4428 of 2014
S.Karthick Varadharajan	... Petitioner in WP(MD)No.4428 of 2014
T.Lakshmi	... Petitioner in WP(MD)No.4430 of 2014

Vs

1.The Deputy Registrar
of Co-operative Societies,
Aruppukottai Taluk,
Virudhunagar District.

2.The President,
Q.874, M.Reddiapatti Primary
Agricultural Co-operative Credit Society Ltd,
M.Reddiapatti Post,
Aruppukottai Taluk - 626 118,
Virudhunagar District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the respondents



WP(MD) Nos.4428 to 4430 of 2014

resulting in the 1st respondent's communication issued in Na.Ka.No.2612/12/V.Se dated 01.08.2012, which is un-communicated and not served on the petitioner and consequential communication of the 2nd respondent dated 31.10.2013 and quash the same and direct the respondents to pay the fixed deposit amounts vide number FDR No.078093 dated 01.10.2011, FDR No.078055 dated 09.08.2011 and FDR No.078092 dated 10.10.2011 belonging to the petitioners respectively, together with accrued interest within the time stipulated.

For Petitioner : Mr.VR.Venkatesan
For Respondent : Mr.G.V.Vairam Santhosh
No.1 Additional Government Pleader
For Respondent : Mr.D.Shanmugaraja Sethupathi
No.2
For Respondent : Mr.J.Bharathan
No.3

ORDER

The writ petitioners are husband, wife and son respectively. They have filed these writ petitions as against the communication of the 1st respondent in Na.Ka.No. 2612/12/V.Se, dated 01.08.2012 and the consequential communication of the 2nd respondent dated 31.10.2013. The communication dated 01.08.2012 has not been filed in the typed set of papers. However, these writ petitions were entertained in the year 2014.



WP(MD) Nos.4428 to 4430 of 2014

2.Considering the nature of the relief sought for, after hearing the respondents, this Court has passed orders on 24.03.2023, 27.03.2023 and 06.04.2023. Today when these writ petitions are taken up for hearing, the learned Counsel for the petitioners submits that he has been instructed by the petitioners to withdraw these writ petitions with liberty to work out their remedy depending upon the outcome of the criminal case, which is pending against them. He has also made an endorsement to that effect.

3.This Court considering the issue involved in this these petitions, is not inclined to permit the petitioners to withdraw these writ petitions and therefore, proceeds further to dispose of these petitions.

4.The writ petitioner Lakshmi is daughter of one Subbammal and Manickam and one Ramakkal, the proposed 3rd respondent is her sister. The said Subbammal has one sister by name Janaki, who had fixed deposits in the second respondent's society to the tune of Rs.25,46,000/-.



WP(MD) Nos.4428 to 4430 of 2014

The said Janaki met with an accident and admitted in the hospital on 02.06.2011 and she was discharged from hospital on 03.08.2011. Later on she passed away on 09.08.2011. She has no heirs. The fixed deposit amount standing in the name of the said Janaki was withdrawn in the name of Janaki on 09.08.2011 and deposited in the name of the writ petitioners, one Chinna Thambi and Rama Subbu, Cashier of the 2nd respondent society. A sum of Rs.8,13,000/- was already withdrawn in the name of Janaki.

5.While so, the said Ramakkal gave a complaint to the Deputy Registrar of Co-Operative Society on 12.12.2011. Based on the complaint, an enquiry under Section 81 of the Tamil Nadu Co-Operative Societies Act was contemplated. The enquiry officer has filed a report that the petitioners' have taken the fixed deposit amount of the said deceased Janaki with the connivance of the officials of the 2nd respondent society. Based on the report, a criminal case was registered as against these petitioners and one Rama Subbu, Cashier of the 2nd respondent society in Crime No.1 of 2017 on the file of the Inspector of Police,



WP(MD) Nos.4428 to 4430 of 2014

CCIW, Virudhunagar. The investigation agency conducted investigation and filed the final report as against the petitioners and Cashier of the Society in CC.No.188 of 2017 on 29.08.2017 before the learned Judicial Magistrate No.II, Virudhunagar. The final report which was filed in the year 2017 is pending at the stage of framing of charges from the year 2017, in view of the discharge applications filed by Rama Subbu [A1] in CRMP.No.233 of 2018 and Bharathi Ganesan [A2] in CRMP.No.232 of 2018 before the learned Judicial Magistrate -II, Virudhunagar. The discharge applications are pending at the stage of enquiry for the past 6 years. Therefore, this Court by earlier order dated 27.03.2023 called for a report from the Judicial Magistrate concerned as to the reasons for pendency of the discharge applications for the past 6 years. The learned Judicial Magistrate-II [FAC], Virudhunagar has submitted a report.

6.The Deputy Registrar in his written instructions to the learned Additional Government Pleader states that the investigation agency filed the final report after obtaining handwriting expert's opinion that there are forgery in



WP(MD)Nos.4428 to 4430 of 2014

signatures in the withdrawal and the writ petitioners A5, A6 and A3 respectively, one Rama Subbu Staff of the 2nd respondent and one Chinna Thambi have filed quash applications before this Court in Cr1OP(MD)Nos.7457, 8224, 8213, 8233 and 8239 of 2022.

7.The respondents claim that the said Janaki in whose name the fixed deposits were lying, met with an accident, was hospitalised on 02.06.2011 and discharged from hospital on 07.08.2011. She passed away on 09.08.2011. Therefore she could not have visited the bank and withdrawn the amount. The amount which was lying in the fixed deposit was permitted to be withdrawn in cash and re-deposited in the name of the petitioners and staff of the 2nd respondent society.

8.It appears there are prima facie materials in the criminal case as against these petitioners. The criminal proceeding is still pending without any progress, in view of the discharge applications. Taking advantage of the same, these petitioners have filed these writ petitions



WP(MD)Nos.4428 to 4430 of 2014

that they are entitled for the remaining amount, which is retained by the 2nd respondent society in view of the complaint of Ramakkal.

9.Now the writ petitioners have sought permission to withdraw these writ petitions. However, this Court is not inclined to permit the petitioners to withdraw these petitions and also is not getting into the merits of the matter. However considering the fact that the criminal case which was registered in the year 2017 is pending without any progress, this Court in exercise of powers under Article 226 of the Constitution of India issues the following directions:

i.The learned Chief Judicial Magistrate, Virudhunagar shall withdraw the case in CC.No.188 of 2017 from the file of the learned Judicial Magistrate-II, Virudhunagar and to transfer it to any other Court and ensure the progress of the case.



WP(MD)Nos.4428 to 4430 of 2014

ii.The transferee Court/ trial Court shall dispose of the said CRMP Nos.232 and 233 of 2018 within a reasonable time, not more than three months from the receipt of files.

iii.The CCIW, Virudhunagar is expected to produce the witnesses before the trial Court and shall co-operate for the earlier disposal of case in CC.No.188 of 2017.

iv.The trial Court shall dispose of the case within a period of six months from the date of receipt of the files. The trial court shall decide the case on its own merits without being influenced by any of the observations made in this order.

10.With the above directions, these writ petitions are disposed. No costs. Consequently connected miscellaneous petitions are also dismissed.

17.04.2023

Internet : Yes / No

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WP(MD) Nos.4428 to 4430 of 2014

To

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- 2.The President,
Q.874, M.Reddiapatti Primary
Agricultural Co-operative Credit Society Ltd,
M.Reddiapatti Post,
Aruppukottai Taluk - 626 118,
Virudhunagar District.

Copy to

- 1.The Chief Judicial Magistrate,
Virudhunagar.
- 2.The Judicial Magistrate No.II,
Virudhunagar.



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WP(MD) Nos.4428 to 4430 of 2014

B.PUGALENDHI, J.

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**WP(MD) Nos.4428 to
4430 of 2014**

17.04.2023