



C.R.P.No.455 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 29.11.2024

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.455 of 2021

and

C.M.P.No.3966 of 2021

The President

E.H.255, Nehruji Handloom Weavers

Co-operative Production and Sales Society Limited,

Palakathur, Alathur Post, Kavunthapadi Via,

Bhavani Taluk, Erode District - 638 455.

.. Petitioner

Versus

1. P.Mohanrasu

2. The Assistant Director of Handlooms and Textiles

O/o. Assistant Director of Handlooms and Textiles,

D.No.429, Bhavani Main Road, Veerappanchatram Post,

Erode - 638 004.

3. The Arbitrator / Handloom Officer.

E.H.255, Nehruji Handloom Weavers

Co-operative Production and Sales Society Limited,

Palakathur, Alathur Post, Kavunthapadi Via,

Bhavani Taluk, Erode District - 638 455.

.. Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India against the order passed in C.M.A(C.S).No.39 of 2016 on the file of the Principal District Court, Erode dated 13.11.2018 to set aside and confirm the order passed by the 3rd Respondent/Arbitrator in ARC No.02/2015-2016 dated 02.08.2016.

For Petitioner : Mr. C. Kulanthaivel



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For R1 : Mr. C. Ramaraj
for Mr. M. Guruprasad

For R2 & R3 : Mr. B. Tamil Nidhi
Additional Government Pleader (C.S)

ORDER

The present Civil Revision Petition is filed by the Petitioner – The President of E.H. 255, Nehruji Handloom Weavers Cooperative Production and Sales Society Limited, Palakatur, Alathur Post, Bhavani Taluk, Erode District. The Petitioner is aggrieved by the order dated 13.11.2018 passed in C.M.A. (CS) No. 39 of 2016 on the file of the Principal District Court, Erode, setting aside the order dated 02.08.2016 passed by the Arbitrator in ARC No. 02/2015-2016 and remanding the matter back for fresh consideration.

2. The first Respondent was employed as Manager in the E.H.255, Nehruji Handloom Weavers Co-operative Production and Sales Society Limited. It is alleged by the Petitioner that during the course of his employment, the first Respondent had misappropriated the funds of the Society. It is also alleged that the first Respondent had indulged in dereliction of duty and had acted irresponsibly, which resulted in causing loss to the Society to the tune of Rs.1,67,000/-.

3. According to the Revision Petitioner, the first Respondent is liable



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to pay Rs.1,67,000/- with interest of Rs.22,118/- upto 31.10.2015 and other expenses of Rs.25/- totally Rs.1,89,143/- with subsequent interest at the rate of 12% per annum till the date of realisation.

4. It is seen from the records that in connection with the above complaint, an order of suspension was passed against the first Respondent on 10.09.2014. Subsequently, on 08.10.2014, a letter was sent by the Petitioner to the first Respondent in which 7 charges were levelled against the first Respondent. The crux of the charges is that on 25.09.2014, 2000 kilograms of cotton cloths were procured and on 01.10.2014, another 2000 kilograms of cotton cloths were procured. In this regard, a cheque for Rs.1,58,000/- was drawn in favour of Visali Tex and materials procured was misappropriated by the first Respondent. The charge against the first Respondent also relate to alleged non-adherence of the Rules of the Petitioner Society and when questioned, he had sent a false complaint on 13.10.2014 to the Assistant Director of Handlooms, Erode, against the Petitioner.

5. In order to prove the charges, an Enquiry Officer was appointed who conducted an enquiry and concluded that all the 7 charges levelled against the first Respondent are proved. Based on the Enquiry Officer's report, a show cause notice dated 07.04.2015 was sent to the first Respondent, for which he



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had not sent a reply, hence, on 14.05.2015 a second show cause notice was sent. As no reply was forthcoming, as per Section 90 of the Tamil Nadu Cooperative Societies Act, 1983, a reference of the dispute was made to the second Respondent, who in turn appointed the third Respondent as an Arbitrator to conduct arbitration. After conducting arbitration proceedings, the Arbitrator passed an award dated 02.08.2016 holding that the first Respondent is liable to remit the loss caused to the Petitioner Society to the tune of Rs.1,67,000/- along with interest of Rs.22,118/- till 31.10.2015 and miscellaneous expenses of Rs.25/-, totalling Rs.1,89,143/- with interest of 12% per annum till realisation.

6. Aggrieved by the award dated 02.08.2016 of the Arbitrator, the first Respondent preferred C.M.A(C.S).No.39 of 2016 before the Principal District Court, Erode. By the judgment dated 13.11.2018, the learned Principal District Court, Erode, set aside the award passed by the Arbitrator on 02.08.2016 with a direction to consider the case afresh. Challenging the Judgment dated 13.11.2018, the Petitioner is before this Court with this Civil Revision Petition.

7. The learned Counsel for the Revision Petitioner

Thiru.C.Kulandaivelu submitted that the Petitioner herein is the President of



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Nehruji Handloom Weavers Co-operative Production and Sales Society

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Limited. The first Respondent in this Revision Petition was the then Manager of the said Society and he had misappropriated the Society's money and indulged in irregularities. The first Respondent/Manager of the Society was therefore placed under suspension by an order of suspension dated 10.09.2014. Thereafter, charges were framed. On 18.02.2015, domestic enquiry was ordered by the Petitioner. The Enquiry Officer submitted a detailed report dated 05.04.2015 after completion of the due enquiry. Thereafter, a show cause notice was sent to the first Respondent seeking his explanation with regard to the report submitted by the Enquiry Officer. As no reply was forthcoming, an Arbitrator was appointed under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 by the second Respondent herein vide order dated 29.01.2016 to decide the dispute under A.R.C.No.2/2015-2016. The third Respondent/Arbitrator issued summons and conducted arbitration on various dates. Finally, the first Respondent cross-examined four witnesses. The Arbitrator after affording reasonable opportunity to all the parties and after detailed examination of oral and documentary evidence passed an award dated 02.08.2016 for recovery of a sum of Rs.1,67,000/- with interest at Rs.22,118/- upto 31.10.2015 with cost of Rs.25/- totalling a sum of Rs.1,89,143/- with subsequent interest at the rate of 12% till the date of realisation. Aggrieved by the award, the first Respondent preferred an Appeal in C.M.A.(CS) No.39 of



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2016 before the learned Principal District Judge, Erode. The said Appeal was allowed on 13.11.2018 whereby the award passed by the Arbitrator was set aside and the matter was remanded back for fresh disposal. Aggrieved by the said order, the Petitioner herein has preferred this Civil Revision Petition.

8. The learned Counsel for the Revision Petitioner submits that the Appellate Court erroneously observed that no opportunity was given and that there are no oral and documentary evidence to prove the charges. The Appellate Court also failed to see that the witnesses were examined only on the request of the first Respondent. The Arbitrator passed the award after taking into consideration all the oral and documentary evidence which was lost sight of by the Appellate Authority. The learned Counsel for the Revision Petitioner submits that the judgment of the learned Principal District Judge in setting aside the well considered award passed by the Arbitrator is perverse and therefore it is liable to be set aside.

9. The learned Counsel for the first Respondent submits that the award passed by the Arbitrator did not contain the list of witnesses examined by the Arbitrator and the list of documents relied by the parties. Thus, the statutory Rule 107 of the Tamil Nadu Co-operative Societies Rules, 1988 was not followed. All the depositions and documents based on which the award was passed by the Arbitrator was not annexed to the award. Therefore, the



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Appellate Tribunal, on appeal by the first Respondent, had arrived at a conclusion that the finding of the Arbitrator is perverse and it amounts to violation of principles of natural justice. Accordingly, the appellate Court had remanded back the matter for fresh disposal. The order passed by the Co-operative Appellate Tribunal is proper and the same is not perverse. The Revision is to be dismissed.

10. ***Point for consideration:***

Whether the order passed by the learned Principal District Judge, Erode in setting aside the award of learned Arbitrator and remanding the matter back for fresh disposal is proper?

11. Perused the records. It is the contention of the learned Counsel for the Revision Petitioner that the first Respondent was placed under suspension on 10.09.2014 and that he remained absent from duty since 02.09.2014 without handing over the charge. During the said period, he misused the cheque drawn by the Society for purchase of 4,000/- Kgs of cotton materials worth Rs.1,58,000/- (Rupees One Lakh and Fifty Eight Thousand only) from the owner of one Vishali Tex without bringing the procured materials to the account of the Society. That he had misappropriated another sum of Rs.9,000/-. Totally the first Respondent is liable to pay a sum of



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Rs.1,67,000/- together with interest. The charges were framed against the first Respondent and domestic enquiry was conducted. The Enquiry Officer submitted a report stating that the charges were proved against the first Respondent. Thus, the first Respondent was liable to pay a sum of Rs.1,67,000/-, being the amount misappropriated by him. As he did not reply to any of the show-cause notices sent to him, the matter was referred to Arbitration under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 for passing decree for a sum of Rs.1,67,000/- together with interest. The Arbitrator/third Respondent conducted enquiry and passed a decree for recovery of a sum of Rs.1,89,143/- along with interest. Aggrieved by the said order, the first Respondent preferred an Appeal before the learned Principal District Judge at Erode in C.M.A.(CS) No.39 of 2016. The learned Principal District Judge at Erode set aside the award passed by the Arbitrator and remanded the matter back to the Arbitrator for fresh disposal. Aggrieved by the said order, the Present Civil Revision Petition had been filed by the Petitioner.

12. The learned Counsel for the first Respondent contends that the Arbitrator did not follow the due procedure while passing the award and that the order of the learned Appellate Judge in setting aside the award holds good and not to be disturbed in this Revision.



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WEB COPY 13. On perusal of the arbitration proceedings it is apparent that it is not conducted in the manner as laid down by the the Tamil Nadu Co-operative Societies Act, 1983 and Rules therein. The Arbitrator ought to have given a brief note in English or Tamil of the oral evidence of the parties viz., the Petitioner and the first Respondent and the witnesses who attended the proceedings. The Arbitrator then ought to have given the list of the documents its nature, description etc., relied on by the parties. Thereafter, the Arbitrator ought to have carefully scrutinised the oral evidences so recorded as well as documentary evidences adduced by the parties and passed the award in accordance with justice, equity and good conscience.

14. The first Respondent herein alleged to have misappropriated the funds of the Society. In order to prove such charges, it must be shown how much amount was misappropriated, the manner in which it was misappropriated, the audited statement of account to show the shortcomings in the funds of the Society etc., In this case, it is alleged that a cheque issued to Vishali Tex drawn by the Society and materials procured thereon has been withheld by the first Respondent during his period of suspension. If it is so, whether the cheque was encashed or not, whether the cheque was deposited in the bank account or not has to be examined, whether the stock register was



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produced and the availability of stocks was examined with reference to the

alleged purchase by examining the appropriate witnesses are not found. The

Arbitrator has also not taken the pains to elucidate the deposition of the

witnesses or the oral and documentary evidence adduced by the parties. It is

clueless as to how the Arbitrator has concluded that the amount of

Rs.1,89,143/- as prayed for in the claim petition by the Petitioner is liable to be

paid by the first Respondent. It appears that the Arbitrator has accepted the

claim petition filed by the Petitioner and the contents thereof as gospel truth

and simply allowed the claim petition without any detailed discussion. In any

event, for passing the award, it must be proved that there was a

misappropriation of amount by the first Respondent and the misappropriation

of the amount was done in a particular manner. Such a conclusion also has to

be substantiated by the claimant by oral and documentary evidence. In this

case, the award of the Arbitrator did not contain any of these evidence and it is

bereft of any material reasons. Further, the claimant who filed the claim

petition ought to have proved the claim by letting in appropriate oral and

documentary evidence. The Petitioner also, being the complainant, ought to

have examined himself by way of examination in Chief and ought to have

marked the relevant documents for substantiating his claim. Thereafter, the

oral and documentary evidence let in by the Petitioner ought to have been

subjected to cross examination by the first Respondent. By way of



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corroboration, the other witnesses ought to have been examined in chief and subjected themselves to cross examination by the first Respondent. Similarly, the documentary evidence relied on by the Petitioner ought to have been subjected to strict scrutiny by the first Respondent. None of these procedures has been adhered to by the Arbitrator while passing the award.

15. The Petitioner, in the first place, ought to have given the list of witnesses and the list of documents relied by him to prove the claim. Whereas in the present case, there is no such list of witnesses and list of documents relied on by the Petitioner. Further, there is no record of evidence of the Petitioner, Petitioner's side witnesses, Respondents, Respondent's side witnesses. Even during Domestic Enquiry, when the first Respondent remained *ex parte* the Enquiry Officer had given a detailed description of the list of witness and the list of documents relied by the Petitioner. However, before the Arbitrator, there is nothing to show that the Petitioner was examined or cross-examined. It is also not known as to on what basis the Petitioner intended to prove his claim without filing any documents.

16. It is stated that at the behest of the first Respondent three witnesses were examined by the first Respondent. However, in the absence of oral and documentary evidence let in by the Petitioner it can safely be



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concluded that the claim itself is devoid of merits. Further, one Balaji alleged to be the owner of Vishali Tex from whom the first Respondent is alleged to have purchased cotton materials worth Rs.1,58,000/-, during his period of suspension illegally and allegedly misused the said materials was not at all subjected to cross-examination by the first Respondent. There is no whisper about the same. Therefore, the award passed by the Arbitrator is not only devoid of merits but also not in accordance with justice, equity and good conscience. Therefore, this Court has no hesitation in holding that the Appellate Court has rightly held that the award passed by the Arbitrator lacks merits and therefore set aside the award of the Arbitrator and had remanded the matter back for fresh disposal.

17. In the light of the above discussion, the Point for consideration is answered in favour of the first Respondent and against the Petitioner. The finding of the Appellate Authority, the learned Principal District Judge, Erode, in the order dated 13.11.2018 passed in C.M.A(C.S).No.39 of 2016 is proper and no interference is warranted.

In the result, this **Civil Revision Petition is dismissed** as having no merits. The order passed in C.M.A (C.S). No.39 of 2016 on the file of the Principal District Court, Erode dated 13.11.2018 is confirmed. There shall be



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no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J

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To

1. The Principal District Court,
Erode.
2. The Assistant Director of Handlooms and Textiles
O/o. Assistant Director of Handlooms and Textiles,
D.No.429, Bhavani Main Road, Veerappanchatram Post,
Erode - 638 004.
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Palakathur, Alathur Post, Kavunthapadi Via,
Bhavani Taluk, Erode District - 638 455.
4. The Section Officer,
V.R.Records,
High Court of Madras.

Judgment in
C.R.P.No.455 of 2021 and
C.M.P.No.3966 of 2021

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