IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR

and

THE HON'BLE MR.JUSTICE C.SARAVANAN

Rev. Appl.No.114 of 2020

1. The Deputy Registrar of Cooperative Societies (Housing), Coimbatore Region, Coimbatore 641 018.

2. No.CBE-HSG-21, The Udumalpet Taluk Co-operative Housing Society Limited, Rep. by its President, No.141, Srinivasa Street, Sri Muthu Towers Upstairs, Udumalpet 642 126. ... Applicants

-vs-

1. N.Velusamy (died),
2. Ponnammal
3. Alamelu
4. Abiramasundari
5. Swarnalakshmi ... Respondents

PRAYER : Review Application filed under Order 47 Rule 1 & 2 of CPC read with Section 114 of CPC seeking review of the order dated 25.09.2020 passed in W.A.No.2727 of 2019 on the file of this Court.

For Applicant : Mr.M.Rajendran
Addl. Govt. Pleader

For Respondents : R-1 died
: Mr.K.Premkumar for RR 2 to 5

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ORDER

(Order of the Court was made by **S.S.SUNDAR, J**)

This review application is filed seeking review of the order passed by this Court dated 25.09.2020 in W.A.No.2727 of 2019.

2. Brief facts that are necessary for the disposal of this review application are as follows:

(a) The deceased first respondent in this review application originally was working as Secretary in the second appellant Society. It is admitted that the first respondent was permitted to retire from service on 30.09.2008 on attaining superannuation. However, the terminal benefits payable to the first respondent were withheld under the pretext that some proceedings were pending against him. Later, a small amount was paid to the first respondent by way of terminal benefits, after deducting a substantial amount of Rs.8,53,204/-.

(b) The first respondent filed a writ petition challenging the communication dated 22.10.2023 passed by the second appellant Society on the ground that the recovery of sum of Rs.8,53,204/- from and out of terminal benefits payable to the first respondent is illegal and also for a consequential direction to settle the terminal benefits with interest at the rate of 12% per annum from the date of retirement. The said writ petition was dismissed on the ground that the recovery was after issuance of show cause notice and therefore, there is no error in the order of recovery.

(c) The first respondent filed an appeal as against the dismissal of the writ petition in W.A.No.2727 of 2019. The writ appeal was allowed. This Court found that the first respondent was permitted to retire from service on 30.09.2008. Since no surcharge proceedings were initiated when the first respondent was in service, this Court came to the conclusion that the applicants were not justified in withholding the terminal benefits merely by citing audit objection. It is to be seen that the only contention of the applicants was that the order dated 12.09.2013 for recovery of amount was passed on the basis of audit objection and therefore, the order of the learned Single Judge has to be upheld. However, taking note of the fact that no proceedings were initiated while the first respondent was in service and the first respondent was permitted to retire from service, this Court allowed the writ appeal holding that the recovery is illegal.

3. This order is now sought to be reviewed only on the ground that the deceased first respondent was given notice prior to the recovery and that there is no illegality in the order of recovery which was passed based on the audit objection. This Court cannot countenance the said submission of the learned Additional Government Pleader appearing for the review applicants.

4. First of all, the judgment in the writ appeal is perfectly in order inasmuch as no disciplinary proceedings preceded for deducting any amount from the retirement benefits. Unless surcharge proceedings were initiated when the first respondent was in service and the amount was determined

after framing charges for the alleged misconduct and recovery was pursuant to final order in surcharge proceedings, it is not possible for the applicants to deduct any amount by way of recovery out of the terminal benefits payable to the retired employee. When the writ appeal was allowed recording the facts and reasons, this Court is unable to find any error apparent on the face of record. A review is not an appeal and it cannot be entertained to rehear the case.

5. Unless there is an error apparent on the face of record, there is no scope for entertaining the review application. This Court is unable to find any error apparent or irregularity in the order dated 25.09.2020 in W.A.No.2727 of 2019. This Court is also of the view that the review was filed only due to financial difficulties of the applicants. That cannot be a reason to entertain a review. Already there is a huge delay in disbursement of the terminal benefits to the retired employee. The retired employee is no more and it is only the legal representatives who are now before this Court.

6. The learned Additional Government Pleader for the applicants

submitted that the direction to pay interest at 12% per annum is not appropriate. This Court is unable to agree with the learned Additional Government Pleader in view of the long delay in disbursement of the terminal benefits. Considering the hardship to which the first respondent and his family are put to on account of the huge delay, this Court is not inclined to reduce the interest from 12% to 10% as pleaded.

For the foregoing reasons, the review application is dismissed. No costs.

(S.S.S.R., J.) **(C.S.N., J.)**
23.08.2024

Index : Yes/No
NC : Yes/No

sra

S.S.SUNDAR, J.
and
C.SARAVANAN, J.

(sra)

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