



W.P.(MD)No.16990 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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M/s.R.S.837, Sivagangai District
Consumers' Co-operative wholesale Stores Ltd.,
Rep. through the Managing Director,
Formerly the Special Officer,
No.6, Ramnagar, Melur Road,
Sivagangai – 630 561.

... Petitioner

versus

1. The Principal District Judge,
Sivagangai.

2. S.Premavathi

3. R.Lakshmikanthan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records of the 1st respondent relating to C.M.A.(C.S.) No.4 of 2005 and quash the order passed therein on 11.03.2014, revising the order of the Arbitrator passed under Section 90 of the Tamilnadu Co-operative Societies Act in ARC No.205 of 2004 dated 06.12.2004 thereby exonerating the 2nd respondent from her liability.



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For Petitioner : Mr.S.Seenivasagam

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ORDER

This writ petition is filed as against the order dated 11.03.2014, passed by the learned Principal District Judge, Sivagangai, in C.M.A. (C.S.)No.4 of 2005, reversing the order of the Arbitrator passed under Section 90 of the Tamilnadu Co-operative Societies Act in ARC No. 205 of 2004 dated 06.12.2004.

2. The petitioner Store is a Co-operative Society constituted under the provisions of the Tamilnadu Co-operative Societies Act 1983 and the Rules framed thereunder. The predominant object of the Store is to ensure proper supply of consumer articles to the public at large at a fair and reasonable price. The Store is having the Head Office at Sivagangai and branches in all the big centres of Sivagangai District.

3. The Fair Price Shops run by the Stores are managed by the respective salesmen posted as in-charge of the particular branch or



shop. The goods worth about several lakhs of rupees are entrusted to the salesmen and to ensure safety and security and interest of the Stores, it is usual for the Stores to get an indemnity bond executed by a worthy person on behalf of the salesman to be appointed by the Stores, to indemnify the loss or damages, if any, caused by the Salesman during his tenure under these Stores. Accordingly, the 3rd respondent, Mr.R.Lakshmikanthan, was appointed as a Salesman in the Store and the 2nd respondent executed a Surety Bond and an Indemnity Bond, undertaking to reimburse the loss, if any, caused by the 3rd respondent during his service in the Stores.

4. The 3rd respondent was deputed to work as the Salesman of the Madhagupatti Retail branch of the Petitioner Stores. While he was working so, an inspection was conducted by the officials of the petitioner Stores for the month of September 2003 and it was found that the 3rd respondent caused deficit in the stock to the extent of Rs.1,35,709.71p, that amounts to misappropriation. Therefore, the 3rd



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respondent was placed under suspension pending disciplinary action.

After verification of the accounts including the previous loss caused by him similarly, there arose a total due of Rs.1,78,696.56p recoverable from him. So, the 3rd respondent was served with a notice dated 30.01.2004 to reimburse the loss immediately. In the meantime, yet another omission of Rs.4,614.76p was found out. Therefore, another revised notice for Rs.1,83,311.32 was served to him. Since the 3rd respondent failed to pay the due amount, the 2nd respondent who stood as the Surety/Indemnifier was served with a notice dated 06.03.2004 to clear the due amount.

5. Thereafter, the petitioner filed a dispute under Section 90 of Tamilnadu Co-operative Societies Act 1983, before the Arbitrator/Deputy Registrar of Co-operative Societies, Sivagangai, against both of them. The dispute was taken into file in ARC No.205 of 2004 for hearing. The Arbitrator through his proceedings delegated his power to decide the dispute by the Co-operative Sub Registrar



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(Stores) having his office in the office of the Deputy Registrar of Co-operative Societies, Sivagangai. In the said proceedings, the second respondent alone appeared and the 3rd respondent absented for three time. Hence, in the presence of the 2nd respondent, the Arbitrator conducted the hearing, recorded her statements and after hearing both sides, passed a decree on 06.12.2004 directing both the respondents therein to pay Rs.1,81,036.72p towards the dues, Rs.14,285/- towards interest and Rs.200/- towards the cost of proceedings, thus, in toto Rs.1,95,521.72p with interest at the rate of 18% till the date of realization and therefore, both respondents were jointly and severally responsible.

6. Challenging the order of the Arbitrator, the 2nd respondent preferred an appeal under Section 152 of the Tamilnadu Co-operative Societies Act, before the first respondent/the Principal District Judge, Sivagangai. The appeal was taken on file as C.M.A.(CS) No.4 of 2005. After hearing both the parties, the learned Principal District Judge,



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Sivagangai, by order dated 11.03.2014, passed an order setting aside the order passed by the Arbitrator against the 2nd respondent and modified the decree holding that the 3rd respondent alone was responsible. Challenging the same, the present writ petition has been filed.

7. The learned counsel appearing for the petitioner submits that the learned Judge failed to note that the 2nd respondent did not assure the conduct of the 3rd respondent, but, undertook to reimburse the loss if any caused by the 3rd respondent during his tenure. He further submits that the learned Judge has also failed to note that the acceptance of liability and undertaking of the 3rd respondent to remit the dues payable by the 3rd respondent shall not absolve the 2nd respondent from the liability arising out of her express assurance and agreement to indemnify. Therefore, the order of the learned Principal District Judge, Sivagangai, is not sustainable and the same is liable to be set aside.



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WEB COPY 8. This Court considered the submissions of the learned counsel for the petitioner and perused the materials placed on record.

9. This writ petition was filed as against the order of the learned Principal District Judge, Sivagangai, passed in C.M.A.(CS)No.4 of 2005 dated 11.03.2014. When this writ petition was listed for admission on 21.09.2015, it was adjourned to 23.09.2015. This writ petition is pending without ordering notice to the respondents 2 and 3 in this writ petition for the past nine years.

10. The learned Principal District Judge, Sivagangai, has also passed an order granting liberty to the petitioner to recover the amount from the concerned salesman, namely, the 3rd respondent herein. According to the learned counsel for the petitioner, the petitioner has also filed an execution petition for recovery of the amount from the 3rd respondent and the same is pending. This writ petition, which is of the



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year 2015 cannot be decided without issuing any notice to the 2nd respondent.

11. Since the writ petition is pending without any notice from the year 2015, instead of keeping this writ petition, this Court is inclined to dispose of the writ petition by granting liberty to the petitioner to work out their remedy with the 3rd respondent as per the order of the learned Principal District Judge, Sivagangai, passed in C.M.A.(CS) No.4 of 2005.

12. Accordingly, this writ petition is disposed of with liberty to the petitioner to work out their remedy with the 3rd respondent as per the order of the learned Principal District Judge, Sivagangai, passed in C.M.A.(CS) No.4 of 2005. No costs.

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NCC : Yes / No.
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B.PUGALENDHI, J.

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