



C.R.P.(MD)Nos.1757 & 1758 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.(MD)Nos.1757 & 1758 of 2022 &
C.M.P.(MD)Nos.7774 & 7775 of 2022

M.Rajendran ...Petitioner in C.R.P.(MD)No.1757 of 2022

R.Krishnaveni ...Petitioner in C.R.P.(MD)No.1758 of 2022

vs.

1.Co-operative Sub Registrar,
(Arbitration and Liquidation)
Deputy Registrar of Co-operative Office, Dindigul.

2.The Branch Manager,
The Dindigul Central Co-operative Bank Limited,
Gopalpatti Branch, Dindigul District.

3.The Deputy Registrar of Co-operative,
Dindigul.

4.Co-operative Tribunal (Principal District Judge),
Dindigul District, Dindigul.

...Respondents in both petitions

Prayer in both petitions: Civil Revision Petitions filed under Article 227 of the Constitution of India praying to call for the records and set aside the fair and decreetal order dated 19.07.2016 in C.M.A.(CS)No.8 of 2007



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on the file of the Co-operative Tribunal (Principal District Judge),
Dindigul.

In both petitions,

For Petitioner : Mr.H.Lakshmi Shankar
For Respondents : Mr.P.Thambidurai,
Government Advocate for R1, R3 and R4
Mr.D.Shanmugaraja Sethupathi for R2

COMMON ORDER

The Civil Revision Petitions are filed challenging the order passed by the learned Principal District Judge, Dindigul dated 19.07.2016 in C.M.A.(C.S.)No.8 of 2007.

2. Originally, a sum of Rs.3,50,000/- was borrowed by the petitioners from the second respondent Bank at the rate of 11.75% interest during the year 2002. There was one year holiday period. Installments start from the year 2003 onwards. The petitioners have paid principal as well as interest and when default occurred in paying the dues, proceedings was initiated before the Deputy Registrar of Co-operative Societies in the year 2004, in which, notice was sent to the petitioners. Hearing date was fixed on 24.03.2005. While so, on



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24.03.2005, the petitioners appeared before the Arbitrator for hearing in the morning. The Arbitrator informed the petitioners to come in the evening. When they visited the Arbitrator in the evening, they were informed that award has already been passed. Without providing any opportunity to the petitioners to file counter or examine the person who filed the claim petition, the Arbitrator passed the award in violation of the principles of natural justice. Challenging the same, the petitioners filed an appeal in C.M.A.(C.S.)No.8 of 2007 before the Principal District Judge, Dindigul and the same was dismissed by the learned Judge vide order dated 19.07.2016. Challenging the same, the petitioners filed writ petitions in W.P.(MD)Nos.972 and 973 of 2017 before this Court. However, this Court directed the petitioners to file Civil Revision Petitions. Accordingly, Civil Revision Petitions were filed and numbered as C.R.P.(MD)Nos.1757 & 1758 of 2022 and the same are before this Court.

3. The contention of the learned counsel for the petitioners is that the Arbitrator refused to grant time to the petitioners to file counter and



even in the first hearing i.e., on 24.03.2005, an *exparte* award was passed. He would submit that the Appellate Court also failed to consider those aspects and hence the award passed by the Arbitrator and the order passed by the Appellate Court are liable to be set aside.

4. *Per contra*, the learned Government Advocate appearing for the respondents 1, 3 and 4 would strongly submit that it is not the case of the petitioners that notice was not issued and opportunity was not provided. Opportunity was provided to them to appear on 24.03.2005. However, they have not filed any counter on that date. Under these circumstances only, award came to be passed. The said aspect was also well considered by the learned Principle District Judge, Dindigul. Therefore, such an order need not be interfered with. Hence, he prayed for dismissal of both the petitions.

5. The learned counsel appearing for the second respondent would submit that the hearing date was fixed on 24.03.2005 after issuance of proper summons. Though the petitioners were aware of the hearing date,



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they chose not to appear before the Arbitrator. Since the petitioners have not appeared even after the receipt of summons and since counter has also been not filed, exparte award came to be passed. Therefore, he would submit that all those aspects were considered by the learned Principal District Judge, Dindigul and thereafter only, he dismissed the appeal and hence, there is no need to interfere with the same.

6. I have give due consideration to the submissions made on either side and perused the materials available on record.

7. In the present case, there is no dispute with regard to the borrowing of a sum of Rs.3,50,000/- from the second respondent at the rate of 11.75% interest on 30.12.2002, 18.03.2003 and 08.05.2003. There was one year holiday period as contended by the petitioners. The installments start from the year 2003. The petitioners as well as the respondents have produced documents, which would show that the petitioners have paid some amount before and after the commencement of the proceedings. In default to pay the amount, proceedings have been



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initiated before the Deputy Registrar of Co-operative Societies in the year 2004.

8. According to the petitioners, summons were served on them and they appeared before the Arbitrator on 24.03.2005 morning to put forth their case. However, the Arbitrator informed them to come in the evening. Accordingly, when they appeared in the evening, exparte award has already been passed. To contradict this statement, the learned Government Advocate appearing for the respondent 1, 3 and 4 would submit that summons were served on the petitioners properly and since they did not appear before the Arbitrator on the hearing date, exparte award has been passed. However, with regard to the fact that if any other hearing date was provided or not, no particulars are available. According to the petitioners, only one hearing date was provided i.e., on 24.03.2005 and on the same date, exparte award was passed without affording any opportunity to them to file counter or examine the person who filed the claim petition.



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9. In the present case, admittedly, neither time was granted to the petitioners to file counter nor opportunity was provided to them to cross examine the claimant who filed the claim petition, with regard to the allegations levelled against them. When the petitioners have appeared for the hearing on 24.03.2005, the Arbitrator ought to have provided opportunity to them for filing counter. However, on that day, without hearing the petitioners, ex parte award was passed and when the petitioners appeared in the evening, they were informed that award has already been passed. This Court is of the opinion that this is not the way of conducting the Arbitration proceedings by the Deputy Registrar of Co-operative Societies. It has to be conducted in a fair manner. The parties ought to be provided with opportunity to file counter. Obviously, the petitioners can file counter and contest the case, only if an opportunity is provided to them. However, in the present case, ex parte award has been passed on the first date of hearing itself, without even giving an opportunity of hearing to the petitioners. When the award was passed by the Arbitrator as such, at least, in the appeal in C.M.A.(C.S.)No.8 of 2007, the learned Principal District Judge, Dindigul should have



considered all those aspects. However, it was not done so.

Mechanically, the learned Judge has confirmed the award passed by the Arbitrator. In view of the above facts and circumstances, this Court finds that the award passed by the Arbitrator on 24.03.2005 is purely in violation of the principles of natural justice. The award is not sustainable in the eye of law. If any award is to be passed against the interest of a person, sufficient opportunity has to be granted to that person. If not, such an award is liable to be set aside. Accordingly the award passed by the Arbitrator on 24.03.2005 is hereby set aside and the matter is remanded back to the Deputy Registrar of Co-operative Societies for fresh consideration and passing of orders afresh.

10. The petitioners herein are directed to file a reply before the Deputy Registrar of Co-operative Societies within a period of three weeks from the date of receipt of a copy of this order. In the event, if the claimant before the Deputy Registrar of Co-operative Societies, who is the second respondent herein is intended to file any reply, they are directed to file the same within a period of two weeks from the date of



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receipt of a copy of this order. Thereafter, the Deputy Registrar of Co-operative Societies is directed to provide an opportunity to the parties, in the event, they intend to adduce any oral or documentary evidence and for cross examination in accordance with law and thereafter is directed to dispose of the petition, within a period of four months from the date of receipt of reply from the petitioners. In the event, if any original records are available with the Principal District Court, Dindigul, the same shall be sent to the Deputy Registrar of Co-operative Societies, Dindigul, forthwith, so as to enable him to pass orders at the earliest.

11. Accordingly, both the Civil Revision Petitions are disposed of.

No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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Note: Registry is directed to return the original records available, if any.



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KRISHNAN RAMASAMY, J.

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