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W.A No. 103 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-04-2025

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A No. 103 of 2023 AND

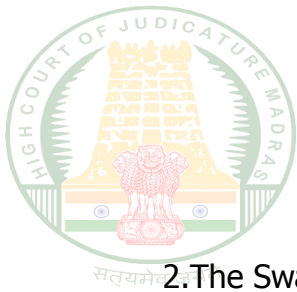
CMP NO. 1063 OF 2023

1. The Deputy Director of Industries and
Commerce (Indl Coops)
CTAI Buildings, Guindy, Chennai 600 032.
2. The Assistant Director Of Industries
and Commerce (Indl coops), District Industries
Centre Branch, Ambattur Industrial Estate,
Chennai 600 058.
3. The Industrial Co Operative Officer
Surcharge Officer, (U/s 87), O/o Deputy
Director of Industries and Commerce (Indl
Coops), CTAL Buildings, Guindy,
Chennai 600 032.

.. Appellants

Vs

1.A.Siluvaiprakasam
S/o Y.Anthonimuthu Nadar, No 131, 1st
Main Road, Krishna Nagar, Maduravoil,
Chennai 600 095.



W.A No. 103 of 2023

2. The Swallows Handicrafts Industrial Co

-operative Society Ltd

Rep by itd Special Officer, Plot No

157/158, Deesiya Nagar, New

Washermenpet, Chennai 600 081.

... Respondents

PRAYER

Writ Appeal under Clause 15 of the Letters Patent to set aside the Order dated 11.04.2022 and made in WP.No. 24745 of 2010.

For Appellants : Mr. C.Kathiravan
Special Government Pleader

For Respondents : Mr.D.Daniel For R1
R2 - Left

J U D G M E N T

(Judgment of the Court was delivered by R.Suresh Kumar J.)

This intra-Court appeal has been preferred against the order passed by the Writ Court dated 11.04.2022 made in W.P.No.24745 of 2010.

2. The first respondent was an employee of the second respondent, against whom a surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act had been initiated, whereby an order has been passed on 30.07.1998.

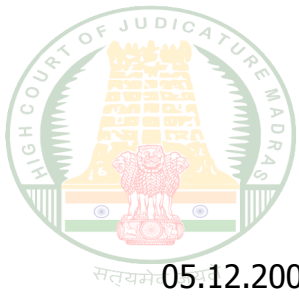


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However, according to the first respondent, copy of the proceedings had been served, only on 02.12.2008. Therefore, recovery had been ordered with interest at the rate of 18% per annum. That order was challenged before the writ Court.

3. Even though point was raised on behalf of the respondents therein / who are the appellants herein that the writ petitioner had not exhausted the appeal remedy under Section 152 of the Act and that was also considered by the learned Judge, the learned Judge came to the conclusion that at this length of time that issue cannot be raised and ultimately the learned Writ Court, after going through the merits of the case, found that the order of surcharge proceedings itself was served even according to the appellants admittedly on 04.12.2004, even though the order was dated 30.07.1998. Therefore, till 04.12.2004 they cannot recover any interest from the writ petitioner. Thereafter also, the amount that has been paid by way of recovery upto 2018 by the petitioner amounts to interest which is more than 300% of the principal amount due. When that being so, the excess amount recovered from the writ petitioner since has to be refunded, the learned Judge has given a direction to recover only a sum of Rs.1,05,220/- calculating the period from



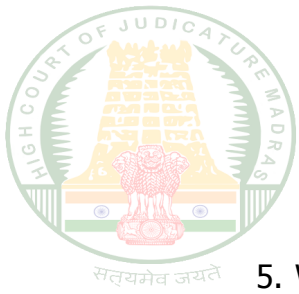
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05.12.2004 at the rate of 9% per annum as interest. The said portion of the order is extracted hereunder for ready reference.

" 8. Therefore to meet the ends of justice, instead of relegating the petitioner to the alternative remedy of appeal at this distant point of time especially considering the fact that the petitioner is now at 64 years of age, while upholding the order of surcharge, no interest can be charged from the date of the order ie., from 30.07.1998 till date of communication of the order as admitted by the respondents ie., upto 04.12.2004. Even after 04.12.2004, the respondents started effecting recovery only from the year 2010 and there is inaction on their part for about six years and the respondents completed the recovery only in the year 2018. The amount of interest recovered is more than 300% of the principal sum due. Therefore, to balance both the interest of the petitioner as well as that of the respondents, it is ordered that the sum of Rs.1,05,220/- will be payable by the petitioner with interest at the rate of 9% from 05.12.2004. The excess amount recovered / retained shall be refunded to the petitioner within a period of three months from the date of receipt of this order."

4. Aggrieved over the said order, the present appeal has been directed. The learned Special Government Pleader would contend that the direction given by the learned Judge to refund the excess the amount over and above Rs.1,05,220/- is not justifiable and therefore, to that extent this appeal has been filed.



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5. We have also heard Mr.D.Daniel, learned counsel for the first respondent / writ petitioner.

6. When such a direction has been given by the learned Judge in Para 8 of the order, which we have extracted herein above, having gone through the same, we do not find any plausible reason available for the appellants to assail the impugned order successfully, the reason being that, first of all the 1998 order was served admittedly in 2004. But, that itself has been disputed. According to the first respondent it was served only in 2008. Thereafter, he filed the writ petition in 2010 and the same was pending for all these years. When that being so, it cannot be stated that on the part of the writ petitioner the due has not been paid or it could not be recovered and therefore it carries an interest, that too at 18% p.a.

7. The amount paid if it is calculated, according to the writ Court, it goes to 300%. The appellants are not entitled to recover such exorbitant amount from an employee who is a retired person. Moreover, the fourth respondent Society with whom the writ petitioner was working and who is the second respondent herein has



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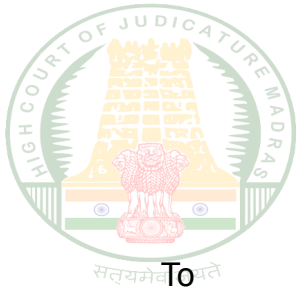
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not come forward with any appeal. Therefore, the actual employer has not raised any finger against the order passed by the Writ Court, as it seems that the second respondent who was the actual employer of the writ petitioner, seems to have not been aggrieved by the order passed by the Writ Court.

8. Therefore, there is every justification on the part of the learned Writ Court to pass the impugned order. Hence, we do not propose to make any interference in the said order. The Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.SURESH KUMAR J.) (A.D.MARIA CLETE J.)
07-04-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
KST



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