
(1996) 11 MAD CK 0001
In the Madras High Court

R. Srinivasan

APPELLANT

Vs

The Special Tribunal for Co-operative Cases and Others

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 34
Tamil Nadu Co-operative Societies Act, 1983 — Section 152(1), 90

Citation : (1997) 2 MLJ 112

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Judgement

P. Sathasivam, J.—The writ petitioner who is a member of third respondent Society has filed the present writ petition seeking a writ of

certiorari calling for the records relating to the proceedings of the first and second respondents herein made in C.M.A. (C.S.) No. 2 of 1990,

dated 5.6.199 land in Award No. 555/88-89, dated 3.10.1989 respectively and to quash the same in so far as they are against the petitioner

herein.

2. The third respondent in the said writ petition has filed C.R.P. No. 1680 of 1983 challenging the reduction of rate of interest in C.M.A. No. 2 of

1990 on the file of the Co-operative Tribunal, Madurai.

3. If the writ petitioner succeeds in his claim, automatically the civil revision petition filed by the third respondent has to be dismissed. In view of the

controversy involved, both the matters can be disposed of jointly.

4. I shall first deal with the facts relating to the writ petition. The petitioner became a member of the third respondent Society after paying his share

capital amount of Rs. 4,000. He made an application before the third respondent

Society for a loan of Rs. 40,000 for the purpose of construction of a building. The third respondent agreed to grant the loan of Rs. 40,000 in three instalments with repayment schedule of Rs. 180 equal monthly instalments spread over for the period of 15 years. In order to secure a loan, the petitioner has executed a mortgage-deed in favour of the third respondent society on 22.12.1984. According to the petitioner, the first instalment of Rs. 12,000 was disbursed only on 12.3.1985. The third respondent society directed him to pay interest on the said first instalment amount before getting the second instalment even though as per the repayment schedule, the commencement of the payment of instalment is after the expiry of one month from the date of disbursement of the 3rd instalment. According to him, on 19.6.1987, he paid a sum of Rs. 4,559.20 towards interest and second instalment of Rs. 16,000 was disbursed to him. He further submits that with the help of the abovesaid loan amount, he constructed the building upto roof level and requested the third respondent society to disburse the third and final instalment so as to enable him to complete the entire construction of the building. It is averred that the third respondent society instead of making the disbursement of the third instalment, insisted on the completion of the entire construction as a condition precedent for the disbursement of the third instalment. For want of funds, he could not complete the entire construction and the building remains, upto roof level. In view of the mortgage already executed in favour of the third respondent society, he could not raise any fund by extending the security of the building also. While such is the position, according to the petitioner, the second respondent issued a summons dated 23.9.1989 directing him to appear on 3.10.1989 before the third respondent society in connection with A.R.C. No. 555/88-89. The summons had been sent to him under a registered post without accompanying copy of the reference made. He further averred that due to ill-health, he could not appear on 3.10.1989 and because of his absence, an ex parte award was passed by the second respondent in Award No. 555/88-89 dated 3.10.1989. Since there is no provision to set aside the ex parte award under the Tamil Nadu Co-operative Societies Act, he filed an appeal u/s 152(1) of the Tamil Nadu Cooperative Societies Act, in C.M.A. No. 2 of 1990 before the Special Tribunal for the Co-operative Cases, Madurai,

viz., the first respondent herein. It is further averred that the appellate authority also, without considering his case and without looking into the mandatory provisions of the Act and Rules, has dismissed the appeal and confirmed the award of the second respondent. In these circumstance, the petitioner has approached this Court under Article 226 of the Constitution of India.

5. No one represented respondents 1 and 2. However, third respondent-Srirangam Co-operative Housing Society is represented by Counsel. But no counter affidavit has been filed by the 3rd Respondent disputing the various averments made by the petitioner.

6. Mr. G. Devadoss, learned Counsel appearing for the petitioner raised the following submissions:

(1) The second respondent has not complied with. Rule 107(7)(c) as well as Rule 11(2) of Tamil Nadu Co-operative Societies Rules, 1988.

(2) Even without disbursement of the third and final instalment amount, the third respondent committed an error in initiating recovery proceedings;

and

(3) The repayments made by the petitioner herein were not duly considered either by the third respondent or by the other respondents.

7. Mr. V. Raghavachari, learned Counsel appearing for the third respondent-Society, as stated earlier, without filing counter affidavit submits the

following contentions:

(1) The mandatory provisions of the Act, and Rules have been duly complied with by all the respondents; and

(2) By the impugned proceedings, the third respondent has initiated recovery only to the amounts already paid and not the entire amount as

contended by the petitioner. I have carefully considered the rival submissions;

8. There is no dispute that the petitioner after becoming a member of the third respondent-society made an application for a loan of Rs. 40,000 for

the purpose of construction of a building. Admittedly the third respondent-society has paid the first instalment of Rs. 12,000 on 12.3.1985 and

second instalment of Rs. 16,000 on 19.6.1987. It is the case of the petitioner that on 19.6.1987 he has repaid a sum of Rs. 4,559.20 towards

interest upto the said date. It is also contended that without disbursing the last and final instalments and before completion of the construction of the

house for which the loan was advanced, the third respondent initiated recovery proceedings. It is seen that since the petitioner has not repaid the principal and interest advanced in instalments as agreed, the third respondent initiated Arbitration proceedings before the second respondent. As

requested by the third respondent, on receipt of necessary claim, the second respondent sent a summons to the petitioner for appearance.

According to the third respondent, after receipt of summons on three occasions, namely, 22.6.1989, 8.7.1989 and 3.10.1989, the petitioner did

not contest the claim, thereby the 2nd respondent passed an ex parte Award No. 555/88-89 dated 3.10.1989 for Rs. 35,337.14 with interest at

14 per cent from the date of petition till the date of realization. At this stage, Mr. G. Devadoss, learned Counsel for the petitioner, drew my

attention to Rule 107(7)(c) of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as "the Rules"). It says:

Rule 107(7)(c) : Where the applicant appears, and the defendant does not appear when the dispute is called on for hearing, then if the Registrar or

the arbitrator or arbitrators or the other person hearing the dispute is satisfied from the record and proceedings that the summons were duly

served, the dispute may be decided ex parte.

Relying on Clause (c) of Sub-rule (7) of Rule 107 of the said Rules, he submits that the petitioner was not duly served with summons and

contended that the award of the second respondent cannot be sustained. He also brought my notice Rule 111(2) which says.

Rule 111(2) - When the summons is to the party against whom a reference has been made under Sub-section (1) of Section 90, it shall be

accompanied by a copy of the reference made.

Relying on Sub-rule (2) of Rule 111 of the Rules, he submitted that the summons said to have been received did not contain a copy of the

reference made by the third respondent before the second respondent. In view of the abovesaid provisions in the Rules, the second respondent

before proceeding further is to see that requirements of the abovesaid Rules have been strictly complied with. In other words, the notice of

summons should contain a copy of the reference made to the Arbitrator. In the absence of such copy of the reference, according to the learned

Counsel for the petitioner, there may not any proper service in terms of Rule

107(7)(c) of the Rules. At this stage, Mr. V. Raghavachari, learned Counsel appearing for the third respondent brought to my notice that summonses have been served on the petitioner on three occasions and on all the occasions the petitioner has put his signature acknowledging that he has received summons. In spite of receipt of 3 notices, the petitioner has not explained why he did not appear before the second respondent in contesting his case. Even before me also the learned Counsel for the petitioner has not given any reason for the petitioner's absence before the second respondent. In view of the above referred Rules pointed out by the learned Counsel for the petitioner, I perused the copy of the summons served on the petitioner. Even though the copy of the summons does not contain copy of the reference made, the very same summons contains details of the loan transactions, namely, principal amount, interest, penal interest and total amount payable by the petitioner to the society on the date of the claim made by the third respondent before the 2nd respondent. In other words, the summons contained all the necessary particulars to enable the debtor viz., the petitioner to contest the claim before the arbitrator. If that is so, I am of the view that there is sufficient compliance of Rule 107(7)(c) as well as Rule 111(2) of the Rules. In those circumstances, I do not find any substance in the argument of the learned Counsel for the petitioner on the first submission. Moreover, in the appeal filed against the ex parte award of the second respondent before the first respondent, the petitioner herein did not raise any objection with regard to the non-compliance of the above referred Rules either in the memorandum of grounds of appeal or by way of oral argument at the time of hearing. On the other hand, the petitioner, had raised objection only with regard to recovery proceedings and not with reference to non-compliance of the above referred Rules. Hence, as already stated, there is no substance in the said argument and it is also too late for the petitioner to raise such contention before this Court in the writ proceeding.

9. Coming to the second submission, namely, non-consideration of the payments made by the petitioner as well as initiation of recovery proceedings before disbursement of third and final payment, in para 4 of the order, the first respondent has narrated the points raised by the petitioner. However after relying on a decision of this Court reported in

Gurunathan v. Villupuram Co-op. Urban Bank Ltd. 1979 T.L.N J. 448

with regard to the rate of interest after holding that the third respondent society is entitled to only 6 per cent from the date of the petition till the date

of realization of the amount, without considering the other aspects, disposed of the appeal. I carefully considered and perused the order of the first

respondent. The first respondent has considered only one aspect, namely, the rate of interest. Following the decision referred above, the first

respondent has rightly reduced the rate of interest to 6 per cent from the date of Order till the date of realization. The other aspect, namely,

initiation of recovery proceedings before the disbursement of third and final payment and the repayments made by the petitioner towards first and

second instalments have not been considered by the first respondent. When the petitioner has filed an appeal against an award of the arbitrator and

more so, when it is an ex parte award, a duty cast on the appellate authority, viz., is to consider all the aspects and dispose of the same on merits.

The non-consideration of other aspects as pointed out by me and disposal of the appeal only with reference to the rate of interest is erroneous and

cannot be sustained. As a matter of fact, after pointing out the above defect, the learned Counsel for the contesting respondent, namely, third

respondent has also not disputed the above position.

10. In view of the above conclusion, I have no hesitation in setting aside the order of the first respondent. Accordingly, the Order of the first

respondent made in C.M.A. (C.S.) No. 22 of 1990 dated 5.6.1991 is set aside and the matter is remitted back to the first respondent for fresh

consideration as stated above. The first respondent is directed to restore the appeal on its file and dispose of the same after considering all the

points after giving sufficient opportunities to all the parties concerned within a period of three months from the date of receipt of the records from

this Court. Writ petition is disposed of accordingly. No costs. W.M.P. No. 21434 of 1991 is dismissed.

11. In C.R.P. No. 1680 of 1993 only grievance of the petitioner therein (Srirangam Co-operative Housing Society Limited - third respondent in

the writ petition) is with regard to reduction of rate of interest from 14.5 per cent to 6 per cent. After hearing the arguments of Mr. V.

Raghavachari, learned Counsel for the petitioner in the C.R.P., as well as Mr. G.

Devadoss and in the light of a direct decision of this Court reported in Gurunathan v. Villupuram Co-op. Urban Bank Ltd. 1979 T.L.N.J. 448, I do not find any justification to interfere with the said order of the Court below. As a matter of fact, the appellate Court has merely followed Section 34 of the CPC and reduced the rate of interest to 6 per cent which cannot be said to be either improper or illegal. As a matter of fact, the contractual rate of interest has been awarded upto the date of the decree and the reduced rate of interest, namely, 6 per cent is applicable only from the date of the award till the date of the realization. In these circumstances, there is no merit in the revision and the same is dismissed. No costs.