

(1994) 07 MAD CK 0117

In the Madras High Court

Case No : Civil Revision Petition No. 1786 of 1993

V. Abhirami

APPELLANT

Vs

The Secretary, Prathaba Simhapuram Co-operative Building
Society Ltd., Srinivasapuram, Thanjavur-9

RESPONDENT

Date of Decision : 27-07-1994

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1983 — Section 152(3)

Citation : (1994) 07 MAD CK 0117

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : R. Thirugnanam, for the Appellant; R. Swaminathan, Additional Government Pleader, for the Respondent

Judgement

Pratap Singh, J.—This Civil Revision Petition is directed against the order passed in IA. 44 of 1990 is unnumbered CMA of 1990 on the file of Co-operative Tribunal. Madurai. Short facts are: - An ex parte award was passed against the revision petitioner. She filed an appeal before the Co-operative Tribunal. Madurai, in 1990. Under the impression that it was filed belatedly, the revision petitioner filed IA 44 of 1990 praying to condone the delay of 207 days in filing the appeal. That was resisted by the respondent. After enquiry, the Tribunal had dismissed the petition. Aggrieved by the said order, the petitioner before the Tribunal has come forward with this revision petition.

2. Mr. R. Thirugnanam, Learned Counsel appearing for the revision petitioner would submit that as per S. 152(3) of the Tamil Nadu Co-operative Societies Act, 1983, this appeal can be filed within 60 days of the date of communication of the award passed by the Arbitrator and in the instant case, the award was not communicated to the revision petitioner, that the revision petitioner applied for certified copy of the award on 29.1.1990 and filed C.M.A. 10 on 31.1.1990 and that no delay whatsoever had occurred and the court below ought to have taken the Civil Miscellaneous Appeal on file. He would inter alia contend that on the

facts of the case, the reasons given for the delay ought to have been accepted by the Tribunal.

3. Per Contra, Mr. R. Swaminathan, learned Additional Government Pleader, would submit that intimation was sent to the revision petitioner about the passing of the ex parte order even on 8.5.1989 and absolutely no valid reason is given for condoning the delay. Only on 29.1.1990, an application for obtaining certified copy of the award was filed and in the circumstances the order of the Tribunal is correct.

4. I have carefully considered the submissions made by the Learned Counsels.

5. I shall first take up the submission made by Mr. R. Thirugnanam Learned Counsel for the revision petitioner that the period of 60 days shall be computed only from the date of communication of the award to the revision petitioner and that in this case only an intimation of the passing of the ex parte award was passed and that would not tantamount to communication of the award. To consider the submission, section 152(3) of the Act needs extraction. It reads as follows:

Any appeal under sub-section (1) or sub-section (2) shall, subject to the other provisions of the Act, be preferred within sixty days from the date of communication of the decision, order, award refusal, registration or approval complained of, but the appellate authority may admit an appeal preferred after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(emphasis supplied)

Sub-rule 8(c) of Rule 107 of the Tamil Nadu Co-operative Societies Rules, 1988, is also relevant and it reads as follows:

107. Reference of disputes. 8(c):-A copy of the decision, award or order shall be communicated free of cost by the registrar the arbitrator, arbitrators or the other person deciding the dispute to the parties to the dispute by personal delivery under acknowledgment or under certificate of posting.

A conjoint reading of section 152(3) and 8(c) of Rule 107 would show that communication of the award contemplated u/s 152(3) is communication of the award itself. It does not contemplate the communication of an intimation that ex parte award was passed.

6. Now, I shall proceed to consider whether in this case, the communication was only an intimation that an ex parte order was passed or whether the communication was of the award itself. In the affidavit filed by the revision petitioner in the court below, in paragraph 3. She has stated that she was surprised to receive notice from the lower court informing that the case has been decreed on 17-2-1989 and that the said intimation was received by her on 8-5-1989. She has further stated that she has not been furnished with any copy

of the award. These positive allegations are not disputed in the counter affidavit. So it can be taken as an undisputed fact that only notice of intimation of the passing of the ex parte award was communicated and that no copy of the award was communicated. In view of the above fact and in view of the provision of law that an appeal can be filed within 60 days of the date of communication of the award the situation boils down to this much viz, that no copy of the award was communicated to the revision petitioner and the revision petitioner was constrained to apply for a certified copy of the award on 29-1-1990 and she had filed the appeal on 31-1-1990. While so the appeal itself was filed in time and hence the application for condoning the delay is superfluous in this case and consequently in this Civil Revision Petition. I pass an order that there is no delay in filing the appeal and the order is passed accordingly in I.A. 44 of 1990 in the court below. The court below is directed to take the appeal on file and dispose it of, according to law, within three months from the date of receipt of a copy of this order. No costs.