

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.18026 of 2010

and

M.P.1 of 2010

M.Mani

..Petitioner

Vs

1. The General Manager,
Erode District Central Co-operative Bank Ltd.,
Erode.
2. The co-operative Sub Registrar,
(Execution & Liquidation),
Erode District Central Co operative Bank Ltd,
Erode.
3. The Branch Manager,
District Central Co-operative Bank Ltd,
T.N. Palayam Branch, Erode District.

..

Respondents

PRAYER : This Writ Petition is filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the Co-operative Sub Registrar, (Execution & Liquidation) Erode District, Central Co-operative Bank Ltd, Erode the second respondent herein, in bringing the property for auction vide his proceedings Proc.No.E.P.No.242/2008-2009 dated 19.06.2008/09.07.2010 and quash the same is arbitrary, unreasonable, being violative of Tamil Nadu Co-operative Societies Act and consequently direct the respondents herein to restrain from bringing the property from auction sale and to furnish the correct details of payment dues and permit the petitioner to repay the amount in monthly installments and pass such further or other orders.

For Petitioner : Mr.A.R.Suresh

For Respondents: Mr.M.R.Raghavan, for R1 & R3

Ms.T.Girija,

Government Advocate for R2

O R D E R

This Writ Petition has been filed seeking to quash the order of the second respondent in Proc.No.E.P.No.242/2008-2009 dated 19.06.2008/ 09.07.2010 and consequently direct the respondents to restrain from bringing the property for auction sale and to furnish the correct details of payment dues and permit the petitioner to repay the amount in monthly installments.

2. The learned counsel for the petitioner would submit that the petitioner, is a member of the third respondent Bank. He availed a loan for a sum of Rs.1,85,000/- with a simple interest at the rate of 15.5% from the third respondent bank for construction of a house. It is the submission of the learned counsel for the petitioner that though the petitioner was unable to pay the installments regularly due to his family circumstances, he had paid a total sum of Rs.1,30,000/-. It is seen from the receipts that the 3rd respondent has credited the entire amount towards interest and penal interest, without considering the orders issued by the Government waiving the interest and penal interest for poor farmers and villagers, who have obtained loan from the Co-operative Societies. According to the petitioner, the 2nd respondent issued the impugned auction notice dated 19.06.2008/ 09.07.2010 for the auction to be conducted on 20.08.2010, against the provision of Rules invoked under Section 126 (2)(c) of the Tamil Nadu Co-operative Societies Rules, 1988. Challenging the auction notice, the writ petition has been filed.

3. The learned counsel for the petitioner further submitted that the conditional interim order of this Court dated 10.08.2010 has been complied with.

5. On the contrary, the learned Government Advocate would submit that the present writ petition is not maintainable before this Court, since the petitioner is having an efficacious alternative remedy under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988, to approach the concerned authority to file an objection or claim. Hence, the writ petition is liable to be dismissed as not maintainable.

4. Heard the rival submissions of the parties and perused the material available on records.

5. Considering the above submissions made by the learned counsel for the parties, this court is of the view that the writ petition challenging the auction sale notice under Article 226 is not maintainable since there is a provision under Section 135

of the Tamil Nadu Cooperative Societies Rules, 1988, for the petitioner to approach the concerned authority to file an appeal. Further, as the petitioner has complied with the interim orders granted by this Court, the present writ petition has become infructuous. However, it is open to the petitioner to approach the competent authority under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988 within a period of four weeks from the date of receipt of a copy of this order, if so advised.

6. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rkp/avr

To

1. The General Manager,
Erode District Central Co-operative Bank Ltd.,
Erode.
2. The co-operative Sub Registrar,
(Execution & Liquidation),
Erode District Central Co operative Bank Ltd,
Erode.
3. The Branch Manager,
District Central Co-operative Bank Ltd,
T.N. Palayam Branch, Erode District.

+1 Cc to Govt. Pleader sr 55723.

+1 Cc to Mr.A.R. Suresh, Advocate sr 54810.

+1 CC to Mr.M.R. Raghavan, Advocate sr 54605.

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PVS (CO)
sp(05/10/2017)