IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 11203 of 2011 (A)

PETITIONERS:
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1. SANATHANAN PILLAI. V,
(FORMER SECRETARY OF THE SASTHAMKOTTA PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK), PRESIDENT, KARIMTHOTTUVA SCB LTD. 2594, KARIMTHOTTUVA P.O., SASTHAMKOTTA, KOLLAM-690 521.

2. M.V.SASIKUMARAN NAIR, PRESIDENT, THE SASTHAMKOTTA PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.373, SASTHAMKOTTA, KOLLAM-690 521.

3. KRISHNANKUTTI NAIR, PRESIDENT, PATHARAM SERVICE CO-OPERATIVE BANK, LTD.NO.721, PATHARA P.O., KOLLAM.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:
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1. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), KOLLAM, PIN 690 521.

2. THE SASTHAMKOTTA PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD.NO.373, REPRESENTED BY SECRETARY, SASTHAMKOTTA, KOLLAM-690 521.

ADDL.R3 IMPLEADED

ADDL.R3. ANIL KUMAR,
KANJIRAVILAYIL HOUSE,
EDAKKAD, KADAMPANAD, KOLLAM.

ADDITIONAL R3 IMPLEADED AS PER ORDER DATED 29/01/2015 IN I.A.NO.1028/2015

R1 BY SPECIAL GOVERNMENT PLEADER SRI.D.SOMASUNDARAM
R2 BY ADV. SRI.P.SANTHALINGAM (SR.)
ADV. SRI.S.SHARAN
ADDL R3 BY ADV. SRI.P.P.JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 3.1.2011.

EXT.P2 & P3: TRUE COPIES OF THE RECEIPTS OF THE FIRST PETITIONER ISSUED BY THE BANK

EXT.P4: A TRUE COPY OF THE RECEIPT OF THE 2ND PETITIONER ISSUED BY THE BANK

EXT.P5: A TRUE COPY OF THE RECEIPT OF THE THIRD PETITIONER ISSUED BY THE BANK

EXT.P6: A TRUE COPY OF THE LETTER DATED 3.2.2011 OF THE FIRST PETITIONER

EXT.P7: A TRUE COPY OF THE LETTER DATED 2.2.2011 OF THE SECOND PETITIONER

EXT.P8: A TRUE COPY OF THE LETTER DATED 2.2.2011 OF THE THIRD PETITIONER

EXT.P9: A TRUE COPY OF THE ORDER DATED 7.3.2011 OF THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R3(a): TRUE PHOTOCOPY OF THE INTERIM ORDER IN W.P.(C) 21/2015 DATED 8.1.2015

EXT.R3(b): TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C) NO.2976/11 DATED 4.2.2011

/TRUE COPY/

P A TO JUDGE

MJL

C.R.

C.K. ABDUL REHIM, J.

W.P.(C).No.11203 of 2011

Dated this the 29th day of January, 2015

JUDGMENT

The petitioners were the Secretary, President, and member of the Managing Committee of the 2nd respondent Bank, respectively. Challenge is against Ext.P9 order passed by the 1st respondent under Section 68 (2) of the Kerala Co-operative Societies Act ('the Act,' for short) to the extent it ordered to pay 14% interest on the amounts which the petitioners have already deposited in the 2nd respondent Bank based on Ext.P1 notice.

2. Brief history of the case is that, while the petitioners were officiating as authorities of the 2nd respondent Bank, an enquiry contemplated under Section 65 of the Act was conducted with respect to the affairs of the Bank. The 1st respondent had issued

Ext.P1 show cause notice to the petitioners and others intimating that an enquiry, as contemplated under Section 68(1) conducted through an Officer authorised, and based on the enquiry conducted under Section 65 of the Act, it was revealed that various persons including the petitioners are responsible for causing loss to the Bank. The petitioners and others were called upon to show cause as to why they were not surcharged under Section 68(2), based on the *prima facie* conclusions that they are responsible for causing loss to the 2nd respondent Bank. In Ext.P1 show cause notice the amount of loss caused by each of the petitioners, which is to be realised from each of them, was specifically mentioned. Liability of the 1st petitioner was shown as Rs.10,793/-. Liability of the 2nd petitioner was shown as Rs.14,409/-. And liability of the 3rd petitioner was shown as Rs.10,793/-. The petitioners have approached this court earlier challenging Ext.P1 by filing W.P.(C)No. 2976/2011. But this court was not inclined to entertain the writ petition, observing that Ext.P1 is only a show cause notice and the petitioners are entitled to file objections before the 1st respondent. Thereafter the petitioners had remitted the amounts demanded under Ext.P1 against each of them, before the 2nd respondent, on 31/12/2010, as evidenced from Exts.P2 to P5 receipts. They have submitted Exts.P6 to P8 letters before the 1st respondent intimating about the remittances made and requested to exclude them from any further proceedings. But 1st respondent had issued Ext.P9 impugned order imposing surcharge on the petitioners. In Ext.P9 it is categorically stated that all the three petitioners as well as another person named Sri.M.Abdul Rasheed have already remitted their liability before the 2nd respondent. But it is ordered that the petitioners and Sri. Abdul Rasheed should remit 14% interest computed on the amount they have already remitted, within a period of one month after receipt of the said order, failing which recovery steps under Sections 68(3) and 69 will be initiated against them. It is aggrieved by Ext.P9 to the extent it imposed surcharge on the petitioners to the extent of the amount of interest, this writ petition is filed.

3. Contention of the petitioners is that, when the amounts pointed out in Ext.P1 notice as liability of petitioners were already remitted, the 1st respondent should not have passed any order against them under Section 68(2) of the Act. It is contended that the amount of interest now claimed cannot be imposed as surcharge under Section 68(2), when the petitioners have already remitted the liability pointed out in the show cause notice. Therefore the order passed in exercise of power vested under Section 68(2) was totally unwarranted and unsustainable, is the contention.

4. Heard; learned counsel appearing for the petitioners, Special Government Pleader (Co-operative)

as well as the counsel appearing for Additional 3rd respondent.

5. Learned Special Government Pleader contended that, going by provisions contained in Section 68(2), when the Registrar is convinced through the enquiry conducted by himself or through any person authorised that a person is responsible for loss caused to the society, it is competent for the Registrar to pass an order requiring him to repay such money along with interest, at such rates as the Registrar may consider just and equitable. Hence, merely because the petitioners have remitted the amounts mentioned in Ext.P1 show cause notice, they cannot be exonerated from the liability to pay interest. Hence the order passed under Section 68(2) against the petitioners directing payment of interest on the amounts already remitted is sustainable, is the contention.

6. A proceedings under Section 68 can be initiated by the Registrar if during any enquiry or inspection it is

found that any person entrusted with management of the society has caused loss to the society by breach of trust, negligence or mismanagement or has misappropriated or fraudulently retained any money of the society. Then the Registrar can conduct an enquiry into conduct of such person, either by himself or through any person authorised. On the facts of the case at hand it is evident that the 1st respondent had authorised the Assistant Registrar (Planning) to conduct an enquiry under Section 68(1). Sub-section (2) of Section 68 mandates that when such enquiry reveals responsibility on any person, the Registrar through an order requires such person to repay or restore the money along with interest, as the Registrar may consider just and equitable. But such an order can be issued only after giving the person concerned an opportunity of being heard. From the contents of Ext.P1 notice it is evident that the petitioners were required to show cause as to why an order under sub-section (2) of Section 68 should not be passed against them imposing surcharge to the extent of specific amounts mentioned therein being the alleged loss caused to the society, as found from the report of enquiry. The notice required the petitioners to submit explanation/objection within 15 days and they were afforded with an opportunity of personal hearing on a particular day. The extent of liability cast upon each of the petitioners were specifically mentioned in Ext.P1. It is not in dispute that the petitioners have remitted such liability to the Bank, on receipt of Ext.P1 show cause notice. Intimation regarding such remittances was also given to the 1st respondent. Question remains as to whether the 1st respondent could issue any further order under sub-section (2) under such circumstances, requiring the petitioners to pay interest on the amount already remitted.

7. Learned counsel for the petitioners contended that, once the person against whom show cause notice

issued had discharged his liability by paying the amount mentioned therein, no further steps under sub-section (2) can be proceeded. The impugned order issued demanding payment of interest is not sustainable, is the contention. *Per contra*, learned counsel appearing for Additional 3rd respondent contended that the Registrar had issued the show cause notice only after arriving at a conclusion that the person concerned needs to be imposed with surcharge. Any remittance made after receipt of the show cause notice will not exonerate the person from being issued with an order under Section 68(2). Hence it is contended that the 1st respondent was fully justified in passing the impugned order directing payment of interest, and the order under challenge is legally sustainable. Learned counsel appearing for 2nd respondent Bank had also raised similar contentions.

8. While considering the issue, it cannot be legally construed that there exists any order under sub-section

(2) at any point of time prior to issuance of notice as required under the said provision. Otherwise the mandatory requirement insisting upon affording opportunity to the person concerned will become totally redundant, or it will lead that affording such an opportunity will become an empty formality. When the statute stipulates that an order under sub-section (2) can be issued only after affording the person concerned an opportunity for personal hearing, a decision under sub-section (2) has necessarily to be followed by compliance of such formality. The order has to be issued by the Registrar based on explanation/objection if any submitted by the person concerned. Until the Registrar passes any order after considering the objections if any raised by such person, it cannot be construed that there exists any valid order against him under Section 68(2). Hence it cannot be accepted that there exists any order issued against the petitioners under Section 68(2) at any point prior to

issuance of Ext.P1 notice.

9. Further question remains as to whether an order can be issued under sub-section (2) when the person concerned had discharged his liability by remittance of amount mentioned in the show cause notice. Section 68 confers power on the Registrar only to direct repayment of the loss caused to the society, with interest or with cost or compensation. Such an order can be issued against a person only if he had failed in paying/repaying the amount of loss. Once the amount of alleged loss is repaid, there exists no circumstances demanding such payment. Therefore this court is of the opinion that no order under sub-section (2) of Section 68 can be issued against a person who had already remitted the liability.

10. Yet another aspect to be considered is as to whether the impugned order can be sustained to the extent it ordered payment of interest on the amounts already remitted. It is clearly evident that in Ext.P1

notice issued under sub-section (2) the petitioners were required to show cause as to why the amounts mentioned against each of them shall not be recovered based on findings in the enquiry that they are responsible for causing loss to the Bank to that extent. There is no mention in Ext.P1 about liability for payment of any interest. Question whether the petitioners are liable for payment of interest on such amounts is different from the scope of an order under sub-section(2). When the petitioners have remitted the amounts specified in Ext.P1, the 1st respondent is not entitled to proceed further to issue any order under sub-section (2) based on Ext.P1. This is especially because, an order issued under Section 68(2) will attract personal disqualifications against the person concerned. Since the 1st respondent has not intimated the petitioners with respect to any liability for payment of interest on the amounts specified in Ext.P1, it is not legally sustainable to pass an order under sub-section

(2) requiring them to pay the interest, which is not even quantified in the order.

11. Under the above mentioned circumstances, Ext.P9 order issued under Section 68 (2) against the petitioners herein is unsustainable. Therefore the writ petition is allowed and Ext.P9 is hereby quashed to the extent it directs the petitioners to make payment of interest at 14% on the amounts already deposited by them.

It is made clear that this court had not expressed any opinion with respect to liability of the petitioners regarding payment of interest on the amounts already deposited, and had not in any manner interdicted the Bank from realising the amount of interest, to the extent permissible under law.

Sd/-**C.K. ABDUL REHIM**
JUDGE

MJL