

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2015

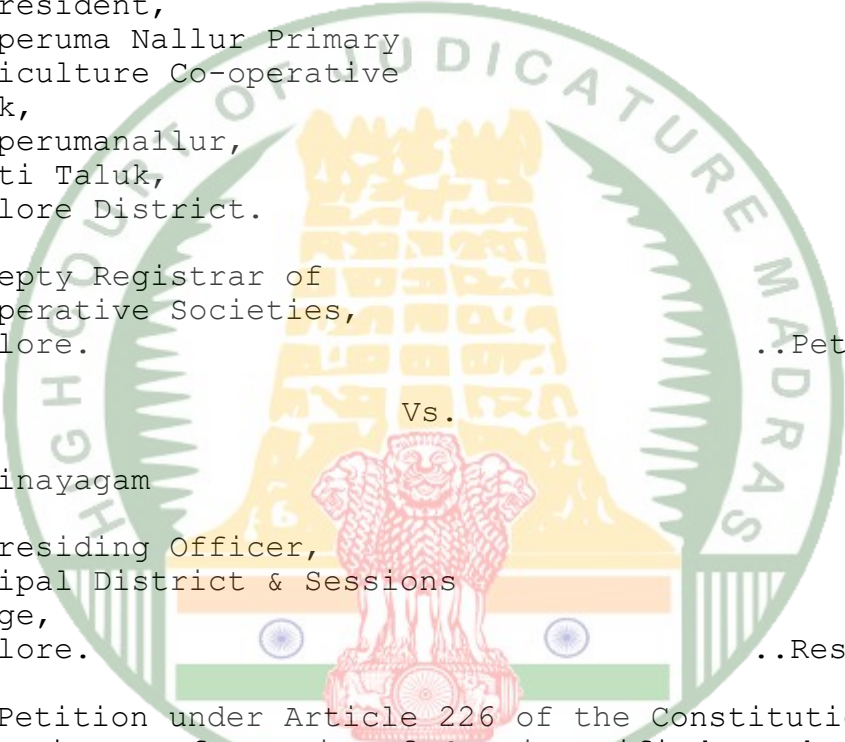
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THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 23952 of 2015

&

M.P. No. 1 of 2015

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1. The President,
Veeraperuma Nallur Primary
Agriculture Co-operative
Bank,
Veeraperumanallur,
Panruti Taluk,
Cuddalore District.
2. The Depty Registrar of
Co-operative Societies,
Cuddalore. ..Petitioners
- Vs.
1. P. Vinayagam
2. The Presiding Officer,
Principal District & Sessions
Judge,
Cuddalore. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent, Principal District Judge/Co-operative Tribunal, Cuddalore, in his proceedings dated 19.01.2015 in C.M.A. (C.S.) No. 61 of 2000 and quash the same and consequently permit the petitioners to proceed with the recovery of the loss sustained to the society.

For Petitioners:: Mr.L.P.Shanmugasundaram,
Special Govt. Pleader

For Respondents:: Mr.M.S. Palanisamy for R1

O R D E R

This writ petition is filed challenging the order passed by the 2nd respondent dated 19.01.2015 in C.M.A. (C.S.) No. 61 of 2000 and quash the same and consequently permit the

petitioners to proceed with the recovery of the loss sustained to the society.

2. The facts of the case are:

The 1st respondent was working as the Secretary in the 1st petitioner Society. For certain omissions and commissions committed by the 1st respondent and others, proceedings were initiated by the 1st petitioner as against the 1st respondent and others and based on the final audit report received after the enquiry conducted under Section 81 of Tamil Nadu Co-operative Societies Act, 1983, it was revealed that there was financial loss caused to the society to the tune of Rs.4,33,492.60p. Thereafter, the 2nd petitioner initiated surcharge proceedings under Section 87 of the said Act and passed orders in Na.Ka.No. 1334/99 Ku.Na dated 29.03.2000 for recovery of the said amount with 18% interest from the 1st respondent and other delinquent officials. Aggrieved by the recovery order, the 1st respondent filed C.M.A. (C.S.) No. 61 of 2000 before the Principal District Judge, Cuddalore District, Cuddalore/Co-operative Tribunal and after hearing the parties, the Tribunal passed an order on 05.12.2013, setting aside the surcharge proceedings and allowing the appeal on the ground that the surcharge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, is barred by limitation, as the enquiry proceedings were not completed either within 6 months from the date of commencement of the enquiry or even within the extended period of time granted by the higher authorities. The said order was challenged by the petitioners herein before this Court in W.P. No. 11969 of 2014 and this Court, by order dated 22.07.2014, set aside the order passed by the Co-operative Tribunal in C.M.A. (C.S.) No. 61 of 2000 and remanded the appeal back to the Tribunal for fresh consideration in the light of the judgment of the Division Bench of this Court rendered in S.V.K. Sahasramam V. Deputy Registrar of Co-operative Societies, Tiruvannamalai Circle, Tiruvannamalai and others reported in (2008) 8 MLJ 231. However, even after remand, the Principal District Judge, Cuddalore District, by the impugned order, without going into the merits of the case, once again, allowed the appeal, on the question of limitation. Hence, the petitioners are before this Court.

3. Heard Mr.L.P. Shanmugasundaram, learned Special Government Pleader for the petitioners and Mr.M.S. Palanisamy, learned counsel for the 1st respondent.

4. This Court, after going through the records, found that the District Court, even after remand, did not follow the order passed by the Division Bench of this Court, as observed in the order dated 22.07.2014 in W.P. No. 11969 of 2014, and

therefore, called for a report from the said Court. The said Court filed a report stating that by oversight, the judgment of the Division Bench of this Court was not noted while passing orders in the appeal on remand. The said report dated 28.09.2015 is accepted, taking into consideration, the various works undertaken by District Judges and the work pressure which they are subjected to.

5. In the light of the report submitted by the District Court, Cuddalore District, the writ petition is allowed and the appeal in C.M.A.(C.S.) No. 61 of 2000, is once again, remanded back to the District Court, Cuddalore District, to be disposed of afresh, on merits and not on the question of limitation, as it has been held by the Division Bench of this Court in S.V.K. Sahasramam V. Deputy Registrar of Co-operative Societies, Tiruvannamalai Circle, Tiruvannamalai and others reported in (2008) 8 MLJ 231 that the period of limitation prescribed under Section 87 of the said Act is only directory in nature and not mandatory. Therefore, the District Court, Cuddalore District shall not go into the question of limitation and dispose of the appeal on merits, within a period of 2 months from the date of receipt of a copy of this order. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Principal District and Sessions Judge, Cuddalore.

+1cc to Mr.L.P. Shanmugasundaram, Advocate, S.R.No.58195

+1cc to Mr.M.S. Palaniswamy, Advocate S.R.No.57979

GR(CO)
EU(19/11/2015)

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