

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.4605 OF 2009

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner to declare the proceedings in Rc.No.2834/2002-B(Cr), dated 01.09.2006, issued by the 1st respondent in so far as it relates to the husband of the petitioner, as arbitrary and illegal and set aside the same, and consequently issue directions restraining the respondents from deducting an amount of Rs.4,21,650.05 or any other amount from the terminal benefits of the petitioner's husband in pursuance of the above said proceedings.

The case of the petitioner is that her husband Mr. Khaleel Ahmed died on 20.11.2004 while he was working as District Manager, A.P. Markfed Limited, Anantapur. The authorities have not released his terminal benefits as the Ex. President, Ex. Directors and Staff of the Kurnool District Cooperative Marketing Society, have misappropriated the funds of the society for their personal use. An inquiry was conducted and basing on the report of the inquiry officer, a show cause notice was issued to the husband of the petitioner alleging that he had misappropriated an amount of Rs.4,38,926.05 while he was working as Ex.Business Manager of that Society, for which the husband of the petitioner submitted his explanation. The 1st respondent, after considering the explanation of the husband of the petitioner, issued the impugned proceedings, dated 01.09.2006, in which the husband of the petitioner was ordered to contribute an amount of Rs.4,21,650-05 along with 12% interest to the funds of the Society. The grievance of the petitioner is that though the 1st respondent had initiated surcharge proceedings wayback in the year 2001, no final orders were passed when her husband was alive and after his demise, the 1st respondent had issued the impugned proceedings against her husband and others

directing them to contribute the amounts. The authorities, without releasing the terminal benefits, taking steps to deduct the said amount from the terminal benefits of her husband and trying to hand over the same to the 5th respondent.

In the counter affidavit filed by respondent Nos.1, 3 and 4, it is averred that in the audit report of the Kurnool District Coop. Marketing Society Limited, for the year 1998-1999 some defects were pointed out by the auditor, as such an inquiry was ordered and on the basis of the inquiry report, independent inquiries were ordered on the persons, who involved in misappropriation of funds and the persons responsible in misappropriation of funds, including the husband of the petitioner, have submitted their explanations, and after examination of all the material, an amount of Rs.4,21,650.05 was fixed as the amount misappropriated by the husband of the petitioner. It is further stated that in the meanwhile, the Business Manager, Kurnool District Cooperative Marketing Society, has requested to attach the retirement benefits of the husband of the petitioner as the amounts misappropriated by him are due to pay to that Society, therefore, an order of attachment has been issued for recovery of the said amount. It is further stated that the demise of the husband of the petitioner was not brought to the notice of the respondents either by the petitioner or by the Society. However, the fact remains that after giving opportunity as contemplated under the A.P. Cooperative Societies Act, the impugned proceedings were issued; and though the impugned order was passed in 2007, the same was challenged in the 2009 and hence, the writ petition is not maintainable as it was hit by latches.

Heard the learned counsel for both sides and perused the material available on record.

On 06.03.2009, while admitting the writ petition, this Court ordered interim suspension of the impugned proceedings.

Today, when the matter is taken up hearing, learned counsel for the respondents submitted that when there is any order, passed under the surcharge orders of the Act, the petitioner has the right to challenge the same before the Tribunal concerned, by invoking provisions of the Act, and without preferring an appeal, the petitioner has approached this Court.

After hearing the arguments of both sides and after perusing the entire record, this Court is of the view that when there is any order passed under the surcharge proceedings, the affected party can challenge the same by invoking the appropriate provisions, before the tribunal concerned.

Hence, the Writ Petition is disposed of giving liberty to the petitioner to challenge the proceedings of the 1st respondent in Rc.No.2834/2002-B(Cr), dated 01.09.2006, by filing an appeal before the Tribunal concerned, and the Tribunal is directed to condone the delay, if there is any delay in preferring the appeal, in view of the pendency of the writ petition before this Court and pass appropriate orders after hearing both sides.

There shall be no order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

January 28, 2015.
KTL

RAJA ELANGO, J