HONOURABLE SRI JUSTICE RAJA ELANGO

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WRIT PETITION NO:9205 OF 2009

ORDER:

1. This writ petition is filed challenging the order made in R.P.No.4/2008, dated 23.3.2009 and also the order dated 12.10.2006 made in CTA No.323 of 2003 by the 1st respondent-Tribunal.

2. Brief facts of the case are as follows:

The petitioner worked as Business Manager of the District Co-operative Marketing Society Limited (for short, 'DCMS'), Adilabad from 18.5.1999 to 27.11.2000. The District Collector, Adilabad ordered for an inspection, under Section 52 of the A.P. Co-operative Societies Act (VII of 1964) into the affairs of the DCMS with a special reference to the misappropriation of funds by the petitioner. In pursuance of the same, the Deputy Registrar conducted inspection and submitted a report on 31.12.2001 finding the misappropriation of Rs.9,50,587.15 ps. Basing on the same, after conducting an enquiry, the District Co-operative Officer passed the surcharge order against the petitioner for Rs.9,50,587.15 ps., with interest at 18% p.a., from the date of misappropriation till realization. Aggrieved by the same, the petitioner filed CTA No.323 of 2003 before the A.P. Co-operative Tribunal at Hyderabad. The Tribunal partly allowed the CTA reducing the rate of interest from 18% p.a., to 6% p.a., on 9,48,189-15 ps., from the date of misappropriation till realization and further directing the petitioner to pay Rs.2,400/- under charge No.5 without any interest. Against the said order, the petitioner filed Review Petition No.4 of 2008 and the same was also dismissed. Hence, the petitioner approached this Court.

3. While admitting the writ petition, this Court passed interim order directing the parties to maintain status quo.

4. When this matter has come up for hearing, the learned Counsel for the petitioner

brought to the notice of this Court that as the Counsel of the petitioner before the Tribunal could not be present, the Tribunal dismissed the review. He further submitted that the Tribunal has not given sufficient opportunity to argue the matter in CTA and the Tribunal has not considered any of the submissions made by the petitioner in CTA and therefore, an opportunity may be given to argue the matter before the 1st respondent in CTA No.323 of 2003 by setting the order in CTA and restoring CTA. Further, the learned Counsel for the petitioner has also brought to the notice of this Court that in order to prove his bonafides, the petitioner has paid a sum of Rs.5,00,000/- (Rupees Five Lakhs) today and the same was also acknowledged by the society. The said payment was also not disputed by the other side. It is further submitted that the order in the main CTA has not been passed after affording sufficient opportunity to the petitioner and therefore, the petitioner may be afforded an opportunity to submit his case in CTA.

5. Considering the above submissions and the facts and circumstances of the case and in view of the payment of an amount of Rs.5,00,000/- today, without expressing any opinion on the merits of the case, this Court feels that the petitioner can be afforded an opportunity to submit his case before the Tribunal.

6. Accordingly, the Writ Petition is allowed setting aside the orders in R.P.No.4 of 2008 and CTA No.323 of 2003 and restoring CTA No.323 of 2003 on the file of the 1st respondent-Tribunal to its file to adjudicate the matter on merits after affording sufficient opportunity to the petitioner. The 1st respondent-Tribunal is directed to dispose of the CTA as expeditiously as possible, in accordance with law. No order as to costs. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

7. It is made clear that the payment of Rs.5,00,000/- today by the petitioner to the Society and the other payments, if any made earlier by the petitioner, shall be subject to the result of the CTA.

Justice Raja Elango

Date:7.4.2015

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