

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.23352 of 2011

Dated 30th July, 2015

Between:

K.Venkata Subbaiah

...Petitioner

And

The State, rep.by Registrar of Co-operative Societies, Gruhakalpa,
Nampally, Hyderabad and others

...Respondents

Counsel for the petitioner: Sri V.R.Avula

Counsel for respondent Nos.1 to 3: AGP for Co-operation (AP)

The Court made the following:

ORDER:

This writ petition is filed feeling aggrieved by proceedings in Rc.No.186/1989-C1, dated 09.05.2011, of respondent No.2, whereby he has directed the General Manager, District Co-operative Central Bank Limited, Kadapa to recover a sum of Rs.2,22,891.53 ps together with interest at the rate of 18% per annum from the petitioner in pursuance of the surcharge order, dated 09.02.1990.

The brief facts leading to the filing of this writ petition are that the petitioner was the Secretary of respondent No.5-Society at the relevant point of time. Respondent No.3 has issued notice, dated 20.01.1990, under Section 60(1) of the A.P.Co-operative Societies Act, 1964 (for short 'the Act') proposing to recover a sum of Rs.2,22,891.53 ps. Later on, respondent No.3 has issued an order on 09.02.1990 imposing surcharge for the above-mentioned amount on the petitioner.

Respondent No.3 has also initiated criminal prosecution against the petitioner which was registered as C.C.No.50 of 1991 in the Court of the learned Judicial Magistrate of First Class, Pulivendula and the said case ended in the petitioner's conviction. However, in Criminal Appeal No.51 of 1991, the learned II Additional Sessions Judge, Kadapa acquitted the petitioner vide his judgment, dated 06.11.2001.

For recovery of the surcharge amount, when an EP was filed by respondent No.5-Society, the Divisional Co-operative Officer, Proddatur vide his proceedings, dated 21.08.1996, closed the EP on the ground that the petitioner possesses neither movable nor immovable properties. He has also addressed letter in Rc.No.1006/89-E, dated 21.08.1996, to respondent No.5-Society, wherein he has stated that out of Rs.2,22,892/-, a sum of Rs.4,000/- could be realised and that for the balance sum of Rs.2,18,892/-, the EP was closed as the petitioner does not possess either movable or immovable properties. He has, accordingly, suggested to respondent No.5 to write off the balance unrecovered sum of Rs.2,18,892/- together with interest through a General Body resolution. Accordingly, a resolution is stated to have been passed by the General Body of respondent No.5-Society on 27.09.1997 unanimously resolving to 'dismiss' the proceedings pending against the petitioner in E.P.No.715/89-90.

While so, respondent No.3 has issued proceedings in Rc.No.712/2010-C, dated 06.10.2010, under Section 60(1) of the Act calling upon the petitioner to submit his explanation as to why action shall not be taken for recovery of the amount shown therein. The petitioner is claimed to have submitted his detailed explanation on 22.10.2010. Without passing any order on the said show-cause notice, respondent No.3 has addressed the impugned letter, dated 09.05.2011, requesting the General Manager, DCC Bank Ltd., Kadapa to place the subject relating to recovery of a sum of Rs.2,22,891.53 ps together with interest under surcharge from the retirement benefits of

the petitioner, in the ensuing Board meeting for discussion.

Respondent No.3 filed a counter affidavit, wherein it is *inter alia* stated that as regards the surcharge amount, the EP was not pursued due to non-availability of either movable or immovable properties with the petitioner. With regard to the fresh notice of surcharge, dated 06.10.2010, issued under Section 60(1) of the Act, it is averred that the petitioner has submitted his explanation, that the same is under examination and that appropriate decision will be taken thereon. The counter affidavit is, however, conspicuously silent on the letter, dated 21.08.1996, addressed by the Divisional Co-operative Officer, Proddatur to respondent No.5 and the General Body resolution of respondent No.5 writing off the EP amount.

In the absence of any denial of the EP amount being written off, the petitioner's plea in this regard deserves to be accepted. The petitioner has filed copies of the proceedings in Rc.No.1006/89-E, dated 21.08.1996, addressed by the Divisional Co-operative Officer, Proddatur to respondent No.5 and the General Body resolution, dated 27.09.1997, of respondent No.5, the authenticity of which has not been disputed by the respondents. From these documents, this Court is convinced that the balance surcharge amount for which the EP was filed was written off. Therefore, there is no justification whatsoever for respondent No.3 in issuing the impugned proceedings requesting the District Co-operative Central Bank Limited, Kadapa to initiate fresh action for recovery of the balance amount from the petitioner's retirement benefits.

As regards the fresh notice under Section 60(1) of the Act, as the petitioner has submitted his explanation, respondent No.3 shall be left free to deal with the same in accordance with law and the petitioner is also entitled to defend himself in the fresh proceedings initiated against him.

For the above-mentioned reasons, the writ petition is allowed as prayed for.

As a sequel to disposal of the writ petition, WP.M.P.No.28575 of 2011 and WV.M.P.No.4658 of 2011 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

30th July, 2015
VGB