THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No.1736 OF 2008

AND

WRIT PETITION No.18174 OF 2010

ORAL JUDGMENT: *(per the Hon'ble Sri Justice Dilip B.Bhosale)*

This Writ Appeal and the Writ Petition are directed to be heard by this Bench, vide order dated 09.03.2015 passed by learned Chief Justice on administrative side, since they are interconnected. We have heard learned counsel for the parties and gone through the entire materials placed before the Court.

In the Writ Petition, the petitioner – M. Appa Rao has challenged the judgment dated 07.04.2010 in O.A.No.24 of 2009 filed by respondent No.1 – District Cooperative Central Bank Limited (for short, 'the Bank'). The appeal, under Section 76 (1) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'), was directed against the surcharge order dated 31.03.2009, under Section 60 (1) of the Act passed by Deputy Registrar of Cooperative Societies. By this order (31.03.2009), the Deputy Registrar held respondent No.3 – E. Chakradhara Rao, former Assistant Manager of the Bank, responsible for making good the amount of Rs.3,33,000/-, as indicated in the audit report for the year 2000-01. It would be necessary to reproduce the relevant observations made for issuing such direction concerning the petitioner, by the Deputy Registrar. The relevant observations read thus:

> "As seen from the loan ledger of the branch under loan account No.4754 it is observed that a loan of Rs.1,83,000/- was issued to Sri M.

Appa Rao on 03.02.2001 on pledge of F.D.R. Nos.31149, 31150, 30390 and 30391. As per the loan ledge the loan
was recovered along with interest of Rs.5,415/-
on 04.04.2001. The Incharge Branch Manager
Sri E. Chakradhara Rao has made his initials in the loan ledger. On the same day, another loan of Rs.1,75,000/- was issued to him under account No.4336 on pledge of the same (4) F.Ds. The In-charge Manager has made his initials in the loan ledger. As per the statement of
Sri Eeli Chakradhara Rao, he accepted passing the entries in the loan ledger. As per the statement of
Sri M. Appa Rao the previous loan of Rs.4,83,000/- was closed by way of adjustment by recovering interest and part of principle. Hence, his statement can be considered. It is the fault of the then Incharge Manager to issue a fresh loan of Rs.1,75,000/- without collecting the previous loan (if not collected) on pledge of the same F.D.Rs. Regarding loan of Rs.1,20,00/- pointed out by the auditor, the loan of Rs.1,20,000/- taken by Sri Eeli Chakradhara Rao, the then Incharge Manager on 13.09.2001 by forging the signature of Sri M. Appa Rao, it is also fault of the Incharge Branch Manager to create a fresh loan when there is an amount of Rs.1,61,000/- loan outstanding in the name of Sri M. Appa Rao as on date. As seen from the Domestic Inquiry Report conducted by Sri I.V.V.S. Prasad, it is observed that
Sri Eeli Chakradhara Rao in his deposition has agreed that he has taken a loan of Rs.1,00,000/- and another loan of Rs.1,20,000/- in the name of Sri M. Appa Rao by himself. He further agreed in the same deposition that he passed a false entry for Rs.30,000/- in the loan account of
Sri M. Appa Rao. As seen from the loan account No.4521, dated 17.11.2001, an amount of Rs.30,000/- credited to the account, the entry was also passed by the then Incharge Manager.

As seen from the Domestic Inquiry Report conducted by Sri N. Tatababu, Assistant General Manager of the bank against Sri M. Appa Rao, it is observed that the charges framed against him for misappropriation of Rs.3,33,000/- as per audit report, the inquiry officer reported that the charges were “not proved”. The only charge against him was held proved that he worked in the counter of the DCCB Branch, Korukonda, as such he knew the rules and regulations for taking of Fixed Deposit Loans for that he was imposed a punishment of stoppage of two annual increments. The General Manager of the DCCB Ltd., Kakinada, has accepted the Domestic Inquiry Report and issued proceedings on 14.02.2007 duly dropping charges against Sri M. Appa Rao on audit defects.

As per the observations discussed above it is construed that Sri M. Appa Rao was not working an employee of the DCCB Branch, Korukonda, at the time of occurrence of financial irregularities committed by
Sri Eeli Chakradhara Rao, Incharge Manager of the Branch. In fact, no irregularities were taken place in F.D.R. Loan accounts when Sri M. Appa

Rao worked in the branch. As such, it cannot be construed that Sri M. Appa Rao is colluded with Eeli Chakradhara Rao, Incharge Manager of the branch. In fact, Sri Eeli Chakradhara Rao being acted as Incharge Manager he is the custodian of the funds of the branch. He has to protect and safeguard the financial status of the branch. As per the job chart entrusted to the Manager any financial irregularities taken place in the branch he shall be liable to make good of the lose caused by him. Besides taking fictitious F.D.R. Loans in the name of Sri M. Appa Rao, he committed forgery created bogus S.B. accounts and misappropriated the funds of branch, which he has accepted himself before the Domestic Inquiry Officer. On the other hand, the Domestic Inquiry Officer who conducted inquiry against Sri M. Appa Rao has reported that charges not proved. Even though the auditor has submitted his special audit report the bank officials has not taken any action for ordering a statutory inquiry into the affairs of the branch. But without passing any statutory order against Sri M. Appa Rao they have retained the retirement benefits to be paid to him."

In the appeal (O.A.No.24 of 2009) filed by the Bank, the Tribunal held that the petitioner as well as respondent No.3 are responsible for the misappropriation and fixed liability and directed the Bank to recover the misappropriated amount from the petitioner and respondent No.3 jointly and severally in respect of Item No.1 i.e., F.D. Loan No.42754, dated 03.02.2001, of Rs.1,83,000/- and Item No.3 i.e., F.D. Loan No.4521, dated 17.11.2001, of Rs.30,000/-. We are not concerned with Item No.2 bearing F.D.No.4507, dated 13.09.2001 of Rs.1,20,000/- in these proceedings.

The Tribunal, while passing the aforementioned order, considered the questions "when the additional loan amount was granted to repay the earlier loan due, the amounts were to be adjusted in the accounts of the bank by making necessary adjustment entries and how the said amount of Rs.1,75,000/- was paid/delivered to the 2nd respondent? Further, the Tribunal considered "whether the 2nd respondent after collecting the amount of Rs.1,75,000/- properly credited it against the due loan of Rs.1,83,000/-?"

Having regard to the findings recorded by the Deputy Registrar, more particularly, the reference made therein to the Domestic Inquiry conducted by Sri I.V.V.S. Prasad against Sri E. Chakradhara Rao and Domestic Inquiry Report of

Sri N. Tatababu, Assistant General Manager of the Bank, against the petitioner, it is clear that the questions framed by the Tribunal for determination were wrong. Both the questions assume that the petitioner misappropriated the amounts of Rs.1,83,000/- and Rs.30,000/- which, in our *prima facie,* opinion is wrong in the light of the observations made by the Deputy Registrar and so also the defence of the petitioner that whatever loans he had taken were repaid by him, and that respondent No.3 i.e., Sri E. Chakradhara Rao had forged his signatures and received the amounts.

We would not like to examine the submissions or the stand of the petitioner and express any opinion in respect thereof.

We are convinced that the order of the Tribunal deserves to be set aside for more than one reason. Firstly, the Tribunal did not frame proper issues/questions, and secondly, it is apparent that the Tribunal did not consider the findings recorded by the Deputy Registrar in the order dated 31.03.2009. That apart, it was also necessary for the Tribunal to at the most peruse/look into all relevant statement of accounts before arriving at any conclusion in respect of the loan amounts. When we so expressed, learned counsel for the parties have agreed for the following order:

i. The order of the Tribunal dated 07.04.2010 disposing of O.A.No.24 of 2009 is set aside and the Original Appeal is restored to file;

ii. The Tribunal shall decide the O.A. afresh in the light of the observations made in this judgment and so also the order of the Deputy Registrar;

iii. The Tribunal may also look into the audit report, if necessary;

iv. We are informed that the amount of Rs.3,50,000/-, which according to the petitioner belongs to him, is lying with the Bank. The Bank is directed to invest that amount in a Fixed Deposit. It is needless to mention that if the petitioner ultimately succeeds in these proceedings, the Bank shall pay the said amount to the petitioner with interest from the date on which that amount become due till it is actually paid to the petitioner @ 8% per annum; and

v) The Tribunal shall consider and decide the appeal afresh as expeditiously as possible and preferably within a period of six months from the date of receipt of this order. The petitioner is directed to produce copy of this order before the Tribunal before 10th of April, 2015.

The Writ Petition is accordingly disposed of.

In view of the observations made in this order, learned counsel for the appellant prays for disposal of the appeal as not pressed.

The Writ Appeal is accordingly disposed of as not pressed.

Consequently, miscellaneous petitions, if any, filed in the Writ Petition and Writ Appeal stand disposed of. No costs.

DILIP B.BHOSALE, J

A.RAMALINGESWARA RAO, J

11.03.2015

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