

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.27871 OF 2007

ORDER:

The writ petition is filed challenging the order dated 01.11.2007, passed by the A.P. Cooperative Tribunal, Warangal, in I.A.No.141 of 2007 in C.T.A.S.R.No.1044 of 2007, wherein and whereby the application filed by the petitioner under Section 76(3) of A.P.Cooperative Societies Act, 1964 (for short, "the Act"), seeking to condone the delay of 1343 days infiling the appeal against the surcharge proceedings dated 13.06.2003, issued by the 1st respondent-Deputy Registrar, was dismissed.

It is the case of the petitioner that he was the President of the 2nd respondent-Society during the period from 1995 to 2000. While so, the petitioner was issued with the surcharge proceedings dated 13.06.2003, based on the enquiry conducted under Section 52 of the Act. In the surcharge proceedings, petitioner was found to be responsible with respect to two items i.e., 1) Irregular sanction of salary to the Secretary to the tune of Rs.80,336/- and 2) Irregular appointment of clerk on daily payment of wages to the tune of Rs.27,826/-. Recovery of money with respect to the payment to the Secretary was directed to be kept in abeyance on account of the instructions of the Government. In so far as the allegation with respect to loss caused on account of the appointment of daily wage clerk and incurring of expenditure is concerned, on verification of the record, the 1st respondent-Deputy Registrar found, as a matter of fact, a sum of Rs.47,576/- was the sum which is attributable to the petitioner. It is further stated that initially, the petitionenr filed a W.P.No.21611 of 2003 before this Court challenging the surcharge proceedings dated 13.06.2003 and this Court disposed of the same by an order dated 28.10.2003, giving liberty to the petitioner to avail the alternative

remedy of appeal available under the provisions of the Act. Further, while disposing the said writ petition, this Court also directed the impugned surcharge proceedings should be kept in abeyance for a period of twelve months. But, immediately thereafter, the petitioner did not avail the remedy of appeal. However, the petitioner filed the appeal on 28.12.2007 before the A.P. Cooperative Tribunal, Warangal in C.T.A.S.R.No.1044 of 2007 along with an application to condone the delay of 1343 days stating that the petitioner could not file the appeal in time as he was suffering from Peripheral Nephropathy. The Cooperative Tribunal having taken into consideration of the affidavit filed in support of the delay condonation petition and having not been satisfied with the explanation given by the petitioner, dismissed the said delay condonation petition by the impugned order. Aggrieved thereby, the present writ petition is filed. Heard Sri Kowturu Vinayakumar, learned counsel for the petitioner and the learned Government Pleader for Cooperation.

Learned counsel for the petitioner while drawing the attention of this Court to the surcharge proceedings submits that in the show cause notice, petitioner was only show-caused to pay a sum of Rs.27,826/- whereas by the time surcharge proceedings came to be issued, petitioner was fastened with the liability of Rs.47,576/-. In that view of the matter, the impugned order cannot be sustained. As a matter of fact, he contends that this Court gave liberty to the petitioner to approach the Cooperative Tribunal and the reasons for the delay were well explained and there being no contra material, the Tribunal erred in dismissing the delay condonation petition.

Having considered the respective submissions, it may be noted that this Court while admitting the writ petition on 27.12.2007 granted stay of the impugned proceedings subject to the condition of the petitioner paying 50% of the E.P amount within a period of one week.

In the counter-affidavit filed by the respondents, respondents categorically averred that the petitioner did not comply with the interim order dated 27.12.2007. Considering the assertion that the interim order has been complied with, this Court directed to continue the stay if the amount has already been paid as directed and in the alternative to proceed with if the order has not been complied with. No material is produced before this Court with respect to any payment having been made. Be that as it may, the matter is being finally heard and as such whether the payment was made or not is of no consequence now. Though the learned counsel for the petitioner tries to persuade this Court to examine the facts on record especially, the surcharge orders, the fact remains that the petitioner had approached the appellate authority and filed the appeal. However, the petitioner did not choose to avail the remedy of appeal within the stipulated time and there by disintitiled himself for the relief which the appellate authority could have granted. The categorical finding of the surcharge officer that on verification of the record that the petitioner was responsible for spending Rs.47,576/- which was not necessary. Further, the reasons assigned by the petitioner for engaging the daily wage clerk is to the extent at the relevant point of time, the Secretary and other office bearers were not available were found to be not tenable on account of the fact that the temporary payment was made when there were in fact the Secretary and other office bearers available. This Court also does not find any irregularity in directing the recovery of the money and in the process, the Deputy Registrar had taken a pragmatic view in not mulcating the petitioner with interest. In those circumstances, at this point of time, this Court is not inclined to interfere with the impugned order.

Accordingly, the writ petition is dismissed. However, it is made clear that if the petitioner had paid any amount, the same shall be given credit to the petitioner's account. No order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:17.09.2016,
Gk.



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