

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.16237 of 2012

ORDER:

The petitioner worked as a President of Konada PACS during the year 1995-2002. Later on, the said society was merged with Poosapatirega PACS by proceedings of the Joint Registrar/District Cooperative Officer, Vizianagaram, dated 14.11.2002. An enquiry was conducted under Section 51 of the Andhra Pradesh Cooperative Societies Act 1964 in respect of the affairs of the society where the petitioner worked as a President and the report filed on 20.06.2013 revealed that 342 loans to a tune of Rs.4,95,555/- became time barred during the tenure of the petitioner. Accordingly, the Enquiry Officer recommended for recovery of the said amount. In those circumstances, the proceedings were taken against the petitioner and the Secretary of the society, Deva Tata Rao, under Section 60 (1) of the A.P.C.S. Act. A show cause notice was issued to the petitioner and the Secretary on 12.11.2003 and they submitted their explanations. The Deputy Registrar of Cooperative Societies, Vizianagaram, passed surcharge order dated 31.01.2004 by framing the following points for consideration:

- (i) Whether the Ex-President and Ex-Secretary are entrusted with business affairs of the society and failed to discharge their duties as per provisions of byelaws, Act and Rules?

(ii) Whether the 342 overdue loans covering Rs.4,93,555/- are allowed to be barred by limitation by the Ex-President and Ex-Secretary and caused loss to the society by allowing them time barred?

(iii) Whether there is any guilty of breach of trust or willful negligence on the part of the Ex-President and Ex-Secretary in relation to the society?

2. The Deputy Registrar of Co-operative Societies observed that the petitioner never ensured taking of the matter to the Managing Committee by placing the review on overdue loans in the agenda of the meeting. Though he stated that he orally instructed the Ex-Secretary to recover overdue loans, the same is not convincing. He also observed that no material evidence was produced by the Ex-President and no disciplinary action was also taken by him against the Ex-Secretary for his failure. Accordingly, the Deputy Registrar came to the conclusion that the petitioner has not acted diligently and allowed the 342 loans as time barred causing loss to the society to a tune of Rs.4,93,555/-. The other defence raised by the Ex-Secretary that there was some delay in taking legal action on the overdue loans due to pressure of work was also found to be not tenable. In fact, in his deposition, the Ex-Secretary admitted his inaction on the time barred loans. Accordingly, the Deputy Registrar passed an order on 28.03.2007 for recovery of an amount of Rs.4,60,827/- with interest at 14% per annum thereon. Challenging the said order, the petitioner preferred O.A.No.74 of 2007 before the

A.P. Co-operative Tribunal, Visakhapatnam. Before the Tribunal, the petitioner raised three points. It was contended that the list of loanees was not mentioned in the surcharge notice and the Tribunal observed that the petitioner himself endorsed on the list of 342 time barred loanees. The Tribunal also observed that this is not a case of disbursement of loans, but it is a case of inaction of the society in resorting to legal remedies and it is apparent on the face of record. The other contention raised by the petitioner is that the Registrar is empowered to take action *suo motu* under Section 71 (2) of the Act only when the society fails to take action under Section 71 (1) of the Act. The said contention was not accepted on the ground that the primary responsibility rests on the society to safeguard its interest. The last contention raised was with regard to fixation of liability against the President and Secretary of the society ignoring the Managing Committee. The Tribunal observed that the Secretary is the Chief Executive Officer and the President will have general control over the executive and hence the President had to place the matter before the Managing Committee and having failed to do so, the petitioner shall be held responsible. The society was given two months time by the Tribunal to make efforts for recovery of the time barred loans. Challenging the said order dated 04.06.2008, the present writ petition was filed.

3. Though the learned Counsel for the petitioner submitted that the loans were subsequently waived by the Loan Waiver Scheme of

the NABARD by circular dated 28.05.2008, no material is placed before this Court waiving the said loans. The further contention of the learned Counsel for the petitioner is that all the loans were time barred by 1997 itself and the petitioner, who took charge subsequently, cannot be held responsible. But, the list of loanees indicates that the payments were made in 1994 and during the tenure of the petitioner, he should have taken action. Even though the loans were time barred during the period from 1995 to 2002, in lieu of payments made in 1994, there was time for the petitioner to take appropriate action as the petitioner was functioning as the President of the society during the period from 1995 to 2002. The last contention of the learned Counsel for the petitioner is that charging of interest at 14% per annum on the amount of Rs.4,60,827/- is exorbitant. However, the said contention was not raised before the Tribunal and there is no material to show that the said rate of interest is excessive. In any event, the action was initiated against the petitioner for his negligence in discharging his duties which was held proved by the 1st respondent in his order. In the circumstances, this Court sees no reason to interfere with the order of the Tribunal.

4. The Writ Petition is accordingly dismissed. It is needless to observe that if the society is taking any further action against the properties of the petitioner, it is open to the petitioner to produce any evidence relating to the payment of the amounts either by the

Secretary or closure of the loan accounts by subsequent circulars of the Government to the extent of the loans covered under the surcharge order. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

25-11-2016
Gsn

