

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.22928 OF 2010

ORDER:

Heard Sri G.V.Shivaji, learned counsel for petitioner and Sri Mohd. Anwar Ali, counsel for the 2nd respondent.

The petitioner challenges surcharge proceedings Rc.No.429/94/B dated 26-03-2004 and the order dated 05-03-2010 in C.T.A.No.13 of 2009 on the file of the A.P.Co-operative Tribunal, Warangal (for short 'the Tribunal'), as illegal, arbitrary and unconstitutional.

The petitioner invoked jurisdiction of this Court for issuing a Writ of certiorari against the orders impugned in the writ petition.

Sri G.V.Shivaji, counsel for the petitioner, keeping in mind the scope of review under Article 226 of the Constitution of India, has strictly confined his submissions to the jurisdiction of this Court. Hence, the facts are not stated in great detail.

The 1st respondent through proceedings Rc.No.429/94/B, dated 26-03-2004 has held as follows:-

"In view of the above and in exercise of powers conferred on me under Section 60(1) of the Andhra Pradesh Co-operative Societies Act 7 of 1964 vide the G.O.Ms.No.34, Food & Agril. (Coop.IV) Dept., dt.16.1.89. The Deputy Registrar of Coop. Societies, Siddipet Division do hereby direct Sri G.Balraj, Secretary, under suspension, PACS Chinnagundavally to pay an amount of Rs.59,230-00 as detailed hereunder along with interest @ 18% + 2% per annum from

1. Rs.250-00 Balance Salary
2. Rs.480-00
3. Rs.5,368-00 Bonus
4. Rs.4,689-00 Less Cash Balance on 24.2.93
5. Rs.2,477-00 Less Cash Balance on 30.3.93.
6. Rs.2,811-00 Suspense
7. Rs.1,140-00 Admission Shares and Evaluation Fee
8. Rs.160-00 Purchase of Bye laws
9. Rs.27,505-00 P.F. Suspense
10. Rs.7,870-00 Bonus and FTA

11. Rs.6,480-00 Shares and Admission Fee

Total : 59,230-00

The above amounts so realised should be credited into the loan account of the society in MDCCB Br:Siddipet only.”

The petitioner filed C.T.A.No.13/2009 before the Tribunal. It is not the case of petitioner that the Tribunal did not consider the basic controversy in surcharge proceeding but the grievance is limited to adherence of procedure under Section 60 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short ‘the Act’). The findings recorded by the Tribunal read as follows:-

“The appellant though preferred the present Appeal after serving the Form 6 and Form 9 in the Execution proceedings after attaching the property of the appellant. Appellant preferred Writ Petition wherein the Hon’ble High Court even directed to deposit half of the surcharged amount but failed. Later the Appellant preferred this Appeal with sole grievance that he is not served with show cause notice and that the surcharge proceedings were conducted behind his back. The appellant has not come out with any grievance that he has documentary evidence in his support or any other evidence in his favour or he wants to cross examine any of the witnesses. The appellant has not moved his little finger to produce such evidence of documentary or witnesses to be examined to his favour are placed any requirement to call for the witness to examine in this Tribunal. The appellant is provided with such opportunity under the provisions of Act and Rules in this Tribunal. Absence of such request explains volumes about the attitude of the appellant.

The appellant is habituated to absent to the inquiries and preparing the appeal to stall the proceedings and his past record from 1994 explains the same. In all the appellant served with the show cause notice by way of reminders even, therefore the surcharge proceedings are legally valid and are within the four corners of provisions and procedures. The learned counsel for appellant contentions have no force hence rejected. The impugned surcharge proceeding of Respondent No.1 does not warrant interference of this Tribunal. The appellant fail to make out any grounds allow the Appeal. The point that is set in goes against to the appellant. Under the circumstances, this Tribunal is of the considered view that this Appeal fails and is liable to be dismissed.

In the result with our discussions and conclusions in the foregoing paras this Appeal is dismissed and the order of Respondent No.1 Rc.No.439/94/B dated 26.03.2004 is hereby confirmed under the circumstances. No order as to costs.”

Mr.Shivaji, contends that 1st respondent did not follow the procedure under Section 60 of the Act and a few of the findings recorded by 1st respondent are unsustainable and liable to be set aside. He alternatively submits that having regard to the totality of circumstances of the case and as against series of charges levelled against the petitioner, a few of charges are held proved and imposition of interest at 18% per annum is onerous and the interest ought to be scaled down to 6% per annum.

The counsel for 2nd respondent replies the submissions of petitioner by drawing the attention of the Court to the detailed procedure followed by 1st respondent and dropping a few charges, which were framed against the petitioner and the findings of fact recorded by respondents 1 and 2.

I have perused the material available on record and noted the submissions of learned counsel appearing for the parties.

At the outset, after carefully perusing each one of the findings recorded by the Tribunal and 1st respondent, I am of the view that the challenge to the orders impugned in the writ petition particularly on the ground of violation of Section 60 of the Act cannot and could not be substantiated and accordingly rejected.

The submission of Mr.Shivaji that interest ought to be scaled down from 18% to 6% is considered having regard to the fact situation of this writ petitioner.

Learned counsel for 2nd respondent submits that the interest at 6% will cause lot of injustice to 2nd respondent Society and submits that interest at 14% can be ordered.

The submission of learned counsel narrows down to exercise discretion by this Court.

I am of the view that the interest payable by the petitioner can be modified from 18% to 11% from the date of surcharge proceeding till the date of complete recovery. It is made clear that the petitioner is entitled to claim for the reduced interest rate, if the total amount payable by the petitioner is settled within two months from the date of receipt of a copy of this order.

The petitioner is given liberty to communicate the copy of this order along with the D.D. to 2nd respondent.

With the above directions, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V. BHATT, J

Date: 22.03.2016
Prv

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