THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.18850 and 18871 of 2009

COMMON ORDER:

Heard Sri N.Siva Reddy, learned counsel for the petitioner and the Assistant Government Pleader for Co-operation.

The petitioner is the Ex-President of Kotananduru Primary Agricultural Co-op., Society Limited/2nd respondent herein. In these writ petitions, the petitioner challenges the order in O.A.No.38 of 2007 dated 30-09-2008 confirming the proceedings bearing Rc.No.3282/95-D1, dated 29-03-2004 and order in O.A.No.37 of 2007, dated 30-09-2008 confirming the proceedings bearing Rc.No.3282/95-D4 dated 29-03-2004 as illegal, null and void.

The circumstances relevant for disposal of the writ petitions are as follows:-

The 1st respondent basing upon the special report of auditor on the accounts of 2nd respondent's Society, issued notice, dated 25-10-1997 under Section 60(1) of A.P.Co-operative Societies Act, 1964 (for short 'the Act'). The petitioner filed his explanation. The 1st respondent initiated surcharge proceedings against the petitioner as well as one B.Ananda Rao, Ex-Secretary of the Society.

Sri B.Ananda Rao remained ex-parte. The deposition of the petitioner was recorded in the enquiry conducted in this behalf. The allegations against the petitioner are that the petitioner and the Ex-Secretary failed to remit the sale proceeds of seeds made payments without vouchers and reduced the cash balance of the 2nd respondent Society. The 1st respondent upon considering the material available on record directed recovery of Rs.16,700/- in W.P.No.18850 of 2009 and Rs.25,430/- in W.P.No.18871 of 2009 with interest at 18% per annum from the petitioner as well as B.Ananda Rao, Ex-Secretary of 2nd respondent

Society. As already noticed, the surcharge proceedings were challenged by filing O.A.Nos.37 of 2007 and 38 of 2007. The Tribunal upon consideration of the nature of allegations against the petitioner and the explanation together with statutory audit report declined the challenge of surcharge proceedings and dismissed the O.As. Hence, the writ petitions.

Learned counsel for the petitioner having regard to findings of fact recorded by the Tribunal and the 1st respondent, did not seriously challenge the surcharge proceedings, challenged in these writ petitions, but made his submissions on fastening joint and several liability on the petitioner and the Ex-Secretary and also the award of interest at 18% per annum. According to petitioner even assuming liability is attracted to petitioner, the liability ought to have been apportioned.

The Assistant Government Pleader by reading the findings of fact recorded by the Tribunal and the primary authority submits that the allegations against the petitioner are in a very narrow compass and to avoid surcharge order, it is open for the petitioner to show that the allegation of non-remittance of sale proceeds or disbursement of cash without vouchers is well within the competency of petitioner having not discharged the burden, no exception to the findings of fact recorded by the authorities can be taken. According to Assistant Government Pleader, as it is a case of misappropriation the recovery of surcharge amount with interest at 18% per annum is justifiable.

I have perused the material available on record and *prima facie* I am in agreement with the finding of fact recorded by the authorities and no exception can be taken on fastening the liability on the petitioner in surcharge orders, dated 29.03.2004. However, even assuming that this court is in agreement with the findings fastening liability, still the award of interest at 18% per annum from 1993-94 till date of realisation, having regard to circumstances stated by Sri

N.Shiva Reddy, learned counsel for the petitioner, is considered and the rate of interest is reduced from 18% per annum to 8% per annum.

The writ petitions are allowed to the extent as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:17-03-2016
Prv

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.18850 and 18871 of 2009

Dated 17-03-2016

Prv