

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.7568 of 2014

and M.P.No.2 of 2014

R.K. Jayanthi

...Petitioner

versus

1. The Cooperative Tribunal/Principal District Judge,
Coimbatore - 641 018.
 2. The Deputy Registrar of Cooperative Societies,
Coimbatore Circle, Coimbatore - 641 018.
 3. The Cooperative Sub-Registrar/District Registrar,
office of the Deputy Registrar of Cooperative Societies,
Coimbatore- 641 018.
 4. The Cooperative Sub-Registrar/Sale Officer,
Office of the Deputy Registrar of Cooperative Societies,
Coimbatore - 641 018.
 5. No.CC.2214, Pricol Employees' Coop.
Thrift and Credit Society Ltd,
Rep. By its present President,
Mettupalayam Road, Perianaikenpalayam,
Coimbatore - 641 020.
- ..Respondents

PRAYER: This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records relating to the impugned Judgment and decree passed in Co-op. CMA No.78 of 2009 dated 15.12.2012 on the file of the Cooperative Tribunal at Coimbatore, confirming the order of Surcharge passed by the 2nd respondent vide Thanda Theervai No.5/2008 Sa.Pa.1 dated 15.12.2008 and quash the same.

For Petitioner : Mr. R. Krishnamoorthy

For RR 1 to 4 : Mr. V.Selvaraj,
Additional Government Pleader

For 5th Respondent: Mr. S. Ravindran

O R D E R

The Writ Petition has been filed seeking for issuance of Writ of Certiorari, calling for the entire records relating to the impugned Judgment and decree passed in Co-op. CMA No.78 of 2009 dated 15.12.2012 on the file of the Cooperative Tribunal at Coimbatore, confirming the order of Surcharge passed by the 2nd respondent vide Thanda Theervai No.5/2008 Sa.Pa.1 dated 15.12.2008 and quash the same.

2. Heard Mr.R.Krishnamoorthy, learned counsel appearing for the petitioner, Mr.V.Selvaraj, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.S.Ravindran, learned counsel appearing for the 5th respondent and perused the materials available on record.

3. The learned counsel for the petitioner would submit that against the petitioner, the 2nd respondent herein has initiated the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, on the basis of misconduct and misappropriation of the amount of Rs.44,230.25. The petitioner has not chosen to submit her explanation for surcharge notice issued by the 2nd respondent. But the petitioner has sought for documents relating to the surcharge proceedings to respond to the said notice. The 2nd respondent has directed the petitioner to peruse the document in the 2nd respondent's office. The petitioner did not avail the said opportunity and did not reply to the surcharge proceedings. Therefore, final order was passed under Section 87 of the Tamil Nadu Cooperative Societies Act. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Tribunal in CMA No.78 of 2009. The Appellate Tribunal dismissed the said appeal and confirmed the order passed by the 2nd respondent. The learned counsel for the petitioner would submit that the order passed by the Appellate Tribunal as well as the 2nd respondent are liable to set aside on the ground that the 2nd respondent has not furnished the enquiry report to the petitioner, inspite of the request made by the petitioner on 03.10.2008 and further no documents were marked before the 2nd respondent and without appreciating the said fact, the tribunal dismissed the appeal. Challenging the said judgment and decree passed by the Tribunal, the petitioner has filed the present Writ Petition before this Court.

4. The learned Additional Government Pleader would submit that the order passed by the 2nd respondent is in consonance with the procedures as contemplated under the Tamil Nadu Cooperative Societies Act and Rules. It is true that the petitioner sought for documents relating to the surcharge proceedings, but the 2nd respondent, by proceedings in Thanda Theervai No.5/2008 Sa.Pa.1 dated 15.12.2008 which was served on the petitioner on 28.05.2008, asked the petitioner to peruse the documents as

requested in her application. The petitioner did not avail such opportunity and therefore the ex-parte surcharge order was passed by the 2nd respondent, which was also confirmed by the Appellate Tribunal. Therefore, the Writ Petition filed by the petitioner is liable to be dismissed.

5. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned counsel for the 5th respondent and perused the materials available on record.

6. It is seen from the materials that the petitioner was working as Secretary in the 5th respondent-Society. The enquiry was contemplated by the 2nd respondent under Section 87 of the Tamil Nadu Co-operative Societies Act 1983, for misappropriation of funds and misconduct of the petitioner. The petitioner has misappropriated society's fund to the tune of Rs.44,230.25. On the basis of the report, the 2nd respondent has initiated surcharge proceedings against the petitioner. At this stage, the petitioner requested the 2nd respondent, in her application dated 03.10.2008 to furnish the copies of the documents. However, the 2nd respondent in the letter dated 08.08.2008 and 23.09.2008 intimated the petitioner to contact the 2nd respondent's office for perusing the documents and get the copies of the necessary documents, as requested by the petitioner. Admittedly, the 2nd respondent has not furnished the copy of the documents as required by the petitioner in her application dated 03.10.2008. Therefore, it is clear that the petitioner herself has requested to furnish copies of documents on payment of costs but, the petitioner, as decided by the second respondent, has not perused the documents and also not participated in the enquiry and therefore, ex-parte order was passed by the 2nd respondent. In the appeal filed the petitioner, the Tribunal also held that the petitioner, in spite of the opportunities given, has not perused the documents.

7. This Court in a similar case reported in 2017 (1) CTC 258 C.Kamaraj (in WP No.7648/15), S.Saravanan (in WP No.16617 & 31309/15) Vs. The Registrar of Co-operative Societies, 170 EVR Periyar High Road, Kilpauk, Chennai and others has set aside the impugned order, on the ground that the petitioner was not furnished with the copies of the documents.

8. In the light of the above cited decision the orders passed by the 2nd respondent as well as the Tribunal are set aside and the matter is remanded back to the 2nd respondent to consider the surcharge proceedings afresh after furnishing the copy of the enquiry report and the documents, as requested by the petitioner in her application dated 03.10.2008 and pass appropriate orders, on merits, in accordance with law, as expeditiously as possible.

9. The Writ Petition is allowed in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jv

To

- 1.The Co operative Tribunal/Principal District Judge,
Coimbatore - 641 018.
- 2.The Deputy Registrar of Co operative Societies,
Coimbatore Circle, Coimbatore - 641 018.
- 3.The Co operative Sub-Registrar/District Registrar,
office of the Deputy Registrar of Co operative Societies,
Coimbatore- 641 018.
- 4.The Co operative Sub- Registrar/Sale Officer,
Office of the Deputy Registrar of Co operative Societies,
Coimbatore - 641 018.
- 5.The President,
No.CC.2214, Pricol Employees' Coop.
Thrift and Credit Society Ltd,
Mettupalayam Road, Perianaikenpalayam,
Coimbatore - 641 020.

+1cc to Mr.K.Prem Kumar, Advocate in sr.no.25368
+1cc to Government Pleader in sr.no.36516

सत्यमेव जयते

W.P.7568 of 2014

SR(CO)
NR 22/06/2017

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