

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.15179 of 2011 and
MP.No.1 of 2011

K.Damodaran

..Petitioner

Vs.

1. The Deputy Registrar of
Cooperative Societies,
Tiruvallur Circle,
No.6, Lalbhagadursasthri Street,
Periakuppam,
Tiruvallur - 602 007
2. No.KP(Spl).180, HVF Employees
Cooperative Thrift & Credit Society Ltd,
Rep.by its Special Officer,
MB-26-A, HVF Estate,
Avadi,
Chennai - 600 054
3. The Enquiry Officer (U/s 81),
O/o the Deputy Registrar of
Cooperative Societies,
Tiruvallur Circle,
No.6, Lalbhagadursasthri Street,
Periakuppam,
Tiruvallur - 602 007

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records in pursuant to the order dated 08.02.2011 passed in Cooperative CMA.No.4 of 2008 on the file of the Cooperative Tribunal / Principal District Court, Thiruvallur and quash the same.

For petitioner : Mr.R.Prem Narayan

For respondents: Mrs.T.Girija,

Government Advocate for R1 & 3

: Mr.L.P.Shanmuga Sundaram,
Special Government Pleader for R2

ORDER:

The petitioner was appointed as clerk and subsequently he was promoted as Secretary incharge from 01.04.2004 to 12.08.2005 and was reposted as Senior clerk from 13.08.2005. The first respondent ordered an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 and the enquiry officer after conducting enquiry, submitted a report by stating that loss has been caused to the society due to negligence of the petitioner in paying penal interest to the Kancheepuram Central Cooperative Bank. Based on the aforesaid report, proceedings under Section 87 of the said Act was initiated against the petitioner. The petitioner has submitted his explanation by stating that there is no mistake on the part of the petitioner in paying penal interest. However, the first respondent passed an order under Section 87 of the Act to recover the loss of Rs.3,56,719/- to the society with interest. Challenging the said order, the petitioner has preferred an appeal in CMA.No.4 of 2008 before the Cooperative Tribunal / Principal District Judge, Tiruvallur. Before the Tribunal, petitioner has raised a ground that part of the enquiry report has not been furnished to the petitioner and there is no willful negligence on the part of the writ petitioner. The aforesaid ground raised by the petitioner has been considered by the Tribunal and held that the petitioner has admitted in his statement that the society has paid the penal interest to the said Bank for default in payment of loan amount. As far as the non furnishing of a part of the enquiry report is concerned, the contention of the petitioner was rejected by the Tribunal and consequently, the appeal was dismissed. Challenging the Judgment passed by the Tribunal, the petitioner has filed the present writ petition before this Court.

2. The learned counsel for the petitioner would mainly contend that the petitioner was furnished only abstract of the enquiry report. Therefore, said proceedings initiated under Section 87 of the said Act is vitiated. The other ground raised by the petitioner is that there is no willful negligence on the part of the petitioner. Hence, there is no loss sustained to the society. Therefore, findings of the original authority as well as the Tribunal is unsustainable in law.

3. The learned Additional Government Pleader would submit that it is an admitted fact that the petitioner has received the abstract of the enquiry report and the petitioner also perused the report but not objected for non furnishing of a part of the report before the authority. On perusal of the

records, it is observed that the said ground has been raised only before the Tribunal. Therefore, the contention of the petitioner cannot be accepted and the same is unsustainable in law. The other ground raised by the learned Additional Government Pleader is that the petitioner being the Secretary in charge of the society, he has duties and responsibilities to administer the society with respect to day to day affairs of the society. In the present case, it is an admitted fact that the petitioner has not deposited a portion of the amount in the Bank and thereby has caused loss to the society. The Secretary, who is responsible for depositing the said amount in the bank, cannot take shelter under the law by stating that there is no loss sustained to the society nor Special officer is responsible for the loss sustained to the society. Further, it is placed before this Court by the Special Government Pleader that the said amount has already been recovered from the petitioner pending the appeal without prejudice to the right subject to the outcome of the appeal.

4. Heard, the learned counsel for the petitioner and the learned counsel for respondents and perused the materials on records.

5. The point for consideration before this Court is that whether non furnishing of part of the enquiry report will vitiate the entire proceedings and whether there is any willful negligence on the part of the petitioner.

6. As far as the first issue is concerned, admittedly, the petitioner has received a part of the enquiry report. However, the grievance raised before this Court was not raised before the enquiry officer. Therefore, in the light of the decision rendered by the Division Bench of this Court in the case of S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016-4-L.W.452, wherein in Paragraph 24, the Division Bench of this Court has rendered as follows.

"24. In so far as furnishing of copies of certain documents and giving adequate opportunities to put forth the case is concerned, the proceedings do show that the appellant was permitted inspection of the material records. Depositions were given to her. She was given repeated opportunities to cross-examine the witnesses, which she earlier declined on account of absence of documents and thereafter also refused to cross-examine the witnesses. It cannot be said, there was inadequacy of opportunity violating the principles of natural justice as applicable to

such proceedings. The judgment sought to be relied upon by the learned counsel for the appellant of the learned Single Judge of this Court in Sambandam vs. The Deputy Registrar (Credit) Co-op. Societies, Mylapore, Madras, 1999 (3) MLJ 310, would not really apply, as in the facts of that case, the enquiry report had not been furnished, while the protest in the present case is apparently on an incomplete enquiry report. It does appear from the conduct of the appellant that excuses were sought to be made, despite sufficient opportunities to defend her case, of violation of principles of natural justice rather there being actually any such absence. The second plea is also, thus, rejected."

7. In the light of the aforesaid decision of this Court, the petitioner cannot raise the plea that sufficient opportunity was not granted to him and there is a violation of principles of natural justice for non-furnishing of the said documents. Therefore, the first contention of the petitioner cannot be countenanced and is liable to be rejected. In so far as the second contention, the willful negligence is concerned, according to the petitioner, there is no willful negligence on the part of the petitioner and there is no loss sustained to the society. Perusal of the records show that duties and responsibilities of the petitioner being the Secretary incharge of the society is also responsible for the deposit of the part of the amount in the Bank. The petitioner himself has admitted in his statement that the loss is sustained to the society. When it is admitted, by enquiry, it is proved that the loss has sustained to the society because of the negligence on the part of the petitioner. Therefore, the second contention of the petitioner that there is no willful negligence on the part of the petitioner is also liable to be rejected, in the light of the decision in the case of S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016-4-L.W.452, wherein the Paragraph 25 is given as follows:

"25. The third and the last plea is actually the most crucial as to whether the appellant could be said to have acted with willful negligence. In this behalf, the learned counsel for the appellant has relied upon two judgments of this Court in S.Subramanian vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore and others, 2002-3-L.W. 185, and K.Ajay Kumar Gosh and Others vs. Tribunal for Co-operative Cases, (2009) 4 MLJ 992, to contend that when requirements of

Section 87 had not been satisfied, which warrants initiation of surcharge proceedings, the liability cannot be fastened. There has to be willful and wanton premeditation with a view to cause loss to the assets of the Society and 'mere negligence cannot be a ground for surcharge and it must be willful negligence or intentional negligence and not mere carelessness or intention or inadvertence or a single lapse by oversight'. We extract the observations in the case of K.Ajay Kumar Gosh, supra, as hereunder:

'19. A detailed discussion has been made by making reference to various judgments on this aspect in another judgment reported in Sathyamangalam Cooperative Urban Bank Ltd. vs. Deputy Registrar of Cooperative Society and Another, (1980) 2 MLJ 17, it is held thus:

'The degree of negligence that is contemplated under Section 71 (1) of the Tamil Nadu Cooperative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' imports premeditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless disregard of probable consequences, a wilful wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss sustained.'

20. In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a

reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the Respondents, it is not possible to mulct the appellants with the loss caused to the society.''

8. In view of the facts and circumstances of the case and the decisions cited supra, there is no error or illegality in the Judgment passed by the Tribunal and this Court has no warrants to interfere with the Judgment passed by the Tribunal.

9. Already, the society has recovered the aforesaid loss amount and the same was accepted by the society. Therefore, the undertaking affidavit filed by the petitioner shows that the loss sustained to the society has been paid by the petitioner.

10. In the result, the writ petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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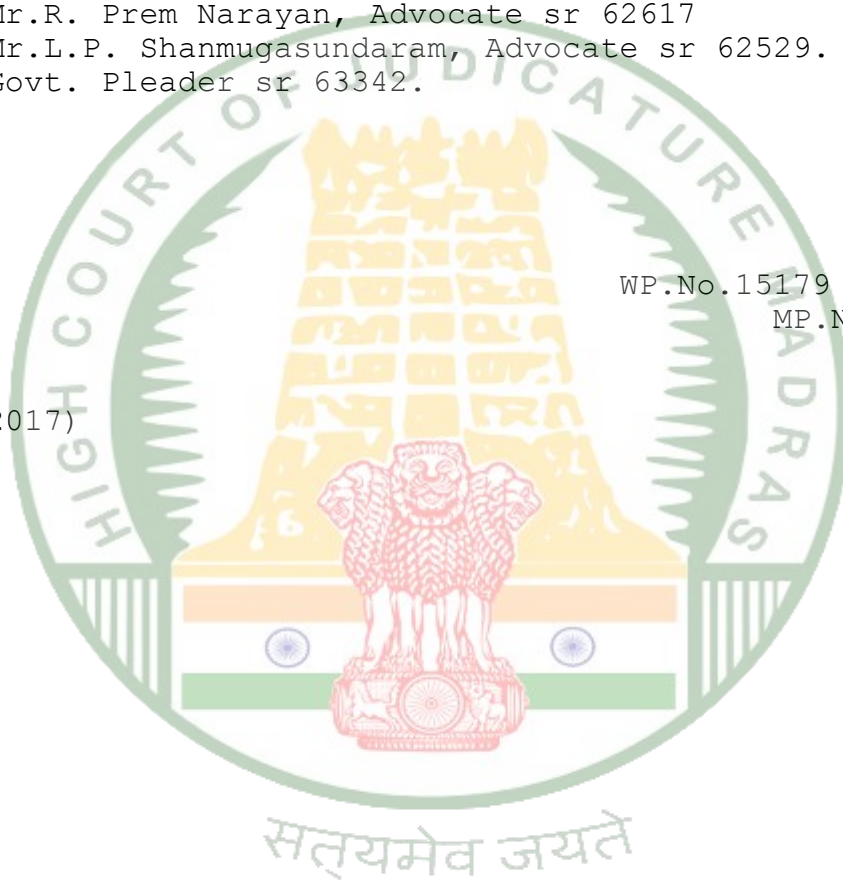
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+1 CC to Mr.M. Loganathan, Advocate sr 63296
+1 CC to Mr.R. Prem Narayan, Advocate sr 62617
+1 Cc to Mr.L.P. Shanmugasundaram, Advocate sr 62529.
+1 CC to Govt. Pleader sr 63342.

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KGK (CO)
SP (23/11/2017)



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