IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.14356 of 2015
and
M.P.No.1 of 2015

The Special Òfficer/ President
Chintadripet Urban Cooperative
Credit Society Limited .. Petitioner

vs.

1. The Chief Judge/ Presiding Officer
The Special Tribunal for Cooperative
Cases/ Court of Small Causes
Chennai.

2. The Deputy Registrar of
Co-operative Societies, (Credit)
Kuralagam, Chennai - 108.

3. Mr. C. Thirunavukarasu .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent Tribunal relating to its common judgment and decree in CMA No.10/12 dated 29.10.2014 and quash the same and also pass such further orders.

For Petitioner : Mr.P. Anbarasan
For Respondents : R1 Tribunal
Mr. L.P. Shanmughasundaram
Addl. Govt. Pleader for R2

No Appearance

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ORDER

This writ petition has been filed seeking to quash the common judgment and decree in CMA No.10/12 dated 29.10.2014 of the 1st respondent Tribunal.

2. Brief facts of the case is as follows :-

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At the time of audit in the petitioner society, certain serious irregularities were found, involving financial loss to the society. Hence, the 2nd respondent conducted inspection under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983. Since the irregularities were found against the 3rd respondent and others, charges were framed against them and notice under Section 87 of the Act was issued, holding to recover a sum of Rs.4,75,816/- and Rs.1,86,935/-. The 3rd respondent submitted his explanation and participated in the enquiry. Since his explanation was not convincing, the 2nd respondent passed an order dated 14.08.2008 directing the 3rd respondent to pay a sum of Rs.4,75,816/- jointly and Rs.11,734/- individually. The 3rd respondent challenged the surcharge proceedings dated 14.08.2008 before the 1st respondent Tribunal in C.M.A. No.10 of 2012 and the same was allowed. Challenging the same, the petitioner society has filed this writ petition.

3. The learned counsel for the petitioner society would submit that in G.O.Ms.No.69 Cooperation and Consumer Protection Department dated 28.03.2002, Government issued certain guidelines for one time settlement of the over due loans. The 3rd respondent misapplied the said Government order and extended the benefits to three persons, namely, Mr. K. Bharathi, Renukanthan and C. Soundarajan, which had caused loss of Rs.4,75,816/- to the society. Further, during the year 2002-2003, by calculating the interest of 36 loanees in a wrong method, the society had suffered a loss of Rs.1,86,935/-. The same was apportioned among the staff and the 3rd respondent is liable to pay Rs.11,734/- individually. Since the appeal filed by the 3rd respondent before the Tribunal was allowed in favour of the 3rd respondent, the society has filed this writ petition to set aside the order passed by the Tribunal, on the ground that the Tribunal has directly allowed the appeal and set aside the order passed by the Deputy Registrar of Co-operative Societies, particularly on the ground of non-furnishing of the copy of the inspection report. In such case, the Tribunal ought to have remanded the matter to the Deputy Registrar of Co-operative Societies to be considered afresh. The learned counsel for the petitioner further urged before this Court that even on merits of the case, the 3rd respondent employee should be held responsible for the breach of the Government order. The Special officer and the 3rd respondent are jointly held responsible for the loss sustained by the society. Hence, the order of the Tribunal is liable to be set aside and prays to allow the writ petition.

4. The learned counsel for the 3rd respondent would submit that the Tribunal has allowed his appeal, after discussing the grounds raised in the appeal and decided on merits of the case, before allowing the appeal. It was further

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submitted that the Government issued G.O.69 Cooperation, Food and Consumer Protection Department dated 28.03.2002, implementing One Time Settlement to provide relief to the borrowers in the Cooperative Sectors, both urban and rural and to recover the long pending over dues. Whileso, the said three persons claimed for the benefit of the scheme, since they were unable to repay their loans. As per the instructions of the Special Officer, following due procedures, waiver of interest was granted to those persons. The learned counsel further submitted that neither in the surcharge notice nor in the surcharge order dated 14.08.2008, the 2nd respondent has pointed out the violation in grant of the benefit of One Time Settlement to those persons or about the wrong calculation of interest in certain loans, by the 3rd respondent. Further, the Special Officer has not preferred any appeal challenging the award passed by the Deputy Registrar of Co-operative Societies. Considering the grounds raised by the 3rd respondent and the society, the Appellate Tribunal has held that the waiver of interest under the One Time Settlement scheme announced by the Government has to be decided by the Board. In the absence of the Board, the concerned Special Officer of the Society is competent to take decision regarding the concession granted under the said scheme. Therefore, the concerned Special Officer, who is competent, has granted the concession to the borrowers and the same is not contrary to the guidelines issued in the Government order. The Tribunal has also considered that there is no negligence on the part of the 3rd respondent, being an employee of the individual society. The Tribunal has rejected the contention of the petitioner society, the Special Officer and the 3rd respondent are responsible for the loss sustained by the society and has clearly held that the 3rd respondent cannot be held responsible for the loss of the society. He further submitted that copies of the inspection report and the audit report have not been furnished to the 3rd respondent. Relying the following decisions of this Court, the Tribunal has set aside the order passed by the Deputy Registrar of Cooperative Societies / 1st respondent and the appeals filed by the 3rd respondent was allowed :

1. A. Janakiraman & anr. vs. Deputy Registrar of Co-operative Societies, Kumbakonam & anr., reported in (2009) 6 MLJ 1051;
2. Chokkappan vs. Special Tribunal for Co-operative Societies, reported in (1999) MLJ 587;

5. It is not disputed by either of the parties that the copies of inspection report and the audit report have been furnished to the 3rd respondent. Therefore, in the light of the decisions afore cited and in the recent judgment of this Court in the case of S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and

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others, reported in 2016-4-L.W.452, it is held that the Deputy Registrar of Co-operative Societies, as an enquiry officer should have furnished copy of the enquiry report to the 3rd respondent employee. Since the settled legal position has not been disputed by the learned counsel for the petitioner society, it is not necessary for this Court to go further into the ground of non-furnishing of the report, in the light of the aforesaid judgement. As far as the other contention of the petitioner society, the 3rd respondent is also liable and responsible for the loss sustained by the society, the Tribunal has considered the same in detail. It has been rightly held by the Tribunal that the Special Officer is the competent authority to decide the request for waiver of interest as per the scheme, in the absence of the elected body, the petitioner society has not placed any material before this Court to prove that the 3rd respondent employee is the cause for the loss sustained by the society, since under Section 87 of the Act, the department has to satisfy the willful negligence of the employee. As per the above cited recent judgment of this Court in S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016-4-L.W.452, there is no material or evidence to prove the willful negligence of the 3rd respondent. Therefore, this Court finds no error or illegality in the order passed by the Tribunal and does not warrant any interference with the order passed in C.M.A. No.10 of 2012 dated 29.10.2014.

6. Therefore, the writ petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

avr

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To

1. The Chief Judge/ Presiding Officer
   The Special Tribunal for Cooperative
   Cases/ Court of Small Causes
   Chennai.

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2. The Deputy Registrar of
Co-operative Societies, (Credit)
Kuralagam, Chennai - 108.

+1cc to Mr.P. Anbarasan Advocate, S.R.No. 67919
+1cc to the Government Pleader, S.R.No. 69516

W.P.No.14356 of 2015
and
M.P.No.1 of 2015

NM(CO)
TR(12/12/2017)

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