

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13560 of 2014

and

M.P.No.1 of 2014

D.K.78, Anchoor Primary Agricultural
Co-operative Credit Society,
Represented by its President,
Anchoor, Krishnagiri Taluk,
Krishnagiri District. Petitioner

- Vs -

1. The Presiding Officer,
District Co-operative Cases
Appellate Tribunal,
Krishnagiri, Krishnagiri District.
2. The Deputy Registrar of
Co-operative Societies,
Krishnagiri Circle, Krishnagiri District.
3. N.Mohan
4. Dharmapuri District Central
Co-operative Bank Ltd.,
Represented by its General Manager,
Krishnagiri Branch,
Krishnagiri District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records relating to the order in C.M.A.(CS)
No.23/2008 dated 28.10.2011 passed by the 1st respondent and
quash the same as being illegal, arbitrary, unconstitutional and
to award costs.

For Petitioner	: Mr.T.Sundaravadanam
For R1	: Tribunal
For R2	: Mr.L.P.Shanmugasundaram Special Government Pleader

For R3 : Mr.Dhanaram
for Mr.G.Ethirajulu

For R4 : Mr.P.Anbarasu

O R D E R

The writ petitioner has filed this writ petition against the impugned order dated 28.10.2011, by setting aside the surcharge order passed by the 1st respondent under Section 87 of the Tamil Nadu Co-operative Societies Act.

2. According to the petitioner, the 3rd respondent is the Circle Supervisor working under the control of Dharmapuri District Central Co-operative Bank, Krishnagiri Branch. The aforesaid branch is to check all agricultural loans and jewel loans applied by the members to the extent of verifying the agricultural fields, survey numbers, titles, possessions and the current position of agricultural lands for cultivation in respect of yielding crops and in respect of jewel loans the beneficiary names and their possession of jewels and the records maintained by the society.

3. According to the petitioner, as per the duties and responsibilities of the respondents, they are also liable to perform their duty in respect of verification of the loans, after performing the relevant records. Therefore, there is an irregularity has been committed in the petitioner society, hence, an enquiry was conducted under Section 81 of the Act. On the basis of the enquiry report, the respondent has proceeded the surcharge proceedings under Section 87 of the Act and order has been passed against the 3rd respondent.

4. Challenging the said order, the 3rd respondent has filed an appeal before the Appellate Authority.

5. According to the petitioner, the 3rd respondent specifically contended before the Appellate Authority that the appellants were not the employees of the Primary Co-operative Bank, Anchoor Branch. Therefore, they are not liable for wilful act or omission or commission on the part of the petitioner society. The bye-law of the Co-operative Bank was also not produced before the Court. On the basis of the available materials, the appellate court has come to a conclusion that the appellants are paid certain employees of the Dharmapuri District Central Co-operative Bank.

6. The 3rd respondent/appellant was not the employee of the Co-operative Society under the provisions of the Act, and therefore, the 3rd respondent is not liable for the surcharge proceedings for the loss suffered to the petitioner society. On these grounds, the appeal was allowed.

7. The learned counsel for the petitioner would submit that the circular issued by the District Co-operative Bank by fixing the duties and responsibilities of the employees, has not been placed before the Tribunal and without considering the said circular, the Tribunal allowed the appeal.

8. Per contra the learned counsel for the respondents would submit that on the basis of the available materials, the Tribunal has rightly come to the conclusion that the 3rd respondent is not held responsible for any mis-appropriation and surcharge order passed under Section 87 of the Act and therefore, there is no need to interfere with the orders passed by the Tribunal.

9. Heard both sides and perused the materials available on record.

10. The contention of the 3rd respondent/appellant is that he is not the employee of the Co-operative society, Anchoor, Krishnagiri. As per Section 87 of the Act, the 3rd respondent is not responsible for any mis-appropriation under the petitioner society and therefore, the 3rd respondent will not be responsible for any omission or commission in the said Act.

11. It is also an admitted fact that the petitioners are the employees under the respondents and on the basis of circular, the duties and responsibilities of the 3rd respondent has to verify the eligibility from the documents, for sanctioning of loan. Therefore, the allegation of the society, without proper verification of documents, the loan amount has been sanctioned, and caused loss to the society. Hence, the necessary proceedings passed against the 3rd respondent.

12. Therefore, the Tribunal allowed the appeal by holding that the 3rd respondent is not liable for the loss caused to the society. It is the fact that the circular issued by the Bank for fixing duties and responsibilities of the employees was not brought to the notice of the Tribunal. Hence, in the interest of justice, an opportunity has to be granted to the petitioner society to place the materials before the appellate Tribunal and to determine the issue for the loss sustained to the society.

13. Under the facts and circumstances of the above, this Court is inclined to interfere with the impugned judgment passed by the Tribunal. Hence, the impugned judgment is set aside and the matter is remanded back to the appellate court to decide the appeal afresh in accordance with law and permit the petitioners to file the circular issued by the Co-operative Bank in the manner known to law. It is needless to say, it is open to the 3rd respondent to file additional documents, if any, before the appellate court, if so advised. In the meantime, the petitioner society undertakes that they will not take any coercive steps against the 3rd respondent pending the appeal.

The writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Presiding Officer,
District Co-operative Cases Appellate Tribunal,
Krishnagiri, Krishnagiri District.
2. The Deputy Registrar of Co-operative Societies,
Krishnagiri Circle, Krishnagiri District.
3. The General Manager,
Dharmapuri District Central Co-operative Bank Ltd.,
Krishnagiri Branch, Krishnagiri District.

+ 1 cc to Mr.T. Sundaravadanam, Advocate SR.64594

+ 1 cc to Mr.P. Anbarasan, Advocate SR.64241

W.P.No.13560 of 2014
and
M.P.No.1 of 2004

SKV(CO)
EU(21/11/2017)