

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 21103 of 2015
and
M.P. No.1 of 2015

S. Dhanabalan

.. Petitioner

Vs.

1.The Deputy Registrar of
Co-operative Societies
Gobichettipalayam Circle
Bajanaikoil Street
Pudupalayam - 638 416
Gobichettipalayam Taluk
Erode District.

2. The Special Officer
Kugalur Agricultural Primary
Co-op. Bank Ltd.,
No.113, Kugalur
Gobichettipalayam Taluk
Erode District.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the remand portion of the judgment and decree dated 18.10.2012 made in CMA (CS) No.24 of 2011 on the file of the learned Special Tribunal Cooperative Cases/ Principal District Court, Erode and the consequential enquiry notice made in Na.Ka. No.75/2015, Sa.Pa dated 05.01.2015 issued by the 1st respondent, quash the same in so far as the petitioner is concerned and pass such further orders.

For Petitioner :Mr. N. Manokaran

For Respondents:Mr. V.Selvaraj
Addl. Government Pleader R1

: Mrs. T.P. Savitha for R2

O R D E R

This Writ Petition has been filed to set aside the judgment and decree dated 18.10.2012 made in CMA (CS) No.24 of 2011 on the file of the learned Special Tribunal Cooperative Cases/ Principal District Court, Erode and the consequential enquiry notice made in Na.Ka. No.75/2015, Sa.Pa dated 05.01.2015 issued by the 1st respondent, in so far as the petitioner is concerned.

2. Brief facts of this case is as follows :

The petitioner's brother K.S. Arumugam was working as an Assistant Secretary/Jewel Appraiser in the 2nd respondent Society and died by committing suicide on 22.12.1998. The 2nd respondent initiated surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 against the petitioner's brother and erstwhile office bearers of the elected Board as well as against the employees on 24.09.1999. The petitioner's father Senchiappa Mudaliar was not a party to the surcharge proceedings initiated by the 2nd respondent and without giving any opportunity of hearing to the petitioner's father Senchiappa Mudaliar, the surcharge order has been passed. Hence, an appeal was filed by the petitioner's father Senchiappa Mudaliar and other persons, in C.M.A. Nos.57, 75, 76 of 2000, 87/2001, 29 & 30 of 2003 before the learned Special Tribunal of Co-operative Cases/ Principal District Court, Erode. The aforesaid appeals were allowed and remanded for fresh disposal on 01.03.2004. When the aforesaid proceeding was pending before the 1st respondent, the petitioner's father Senchiappa Mudaliar died on 13.08.2001, leaving behind the petitioner and his two daughters as the legal heirs. A surcharge notice was passed on 21.02.2007 to the petitioner's father Senchiappa Mudaliar, who died as early as 13.08.2001. Further, without even impleading the legal heirs of Senchiappa Mudaliar and without giving any notice, the 1st respondent has passed the impugned surcharge order dated 06.05.2007 against the petitioner and others. Aggrieved by the same, the petitioner filed C.M.A. (CS) No.24 of 2011 before the Tribunal. The Tribunal passed a common order on the appeals filed by all the parties, on 18.10.2012, remanding the matters to be decided by the 1st respondent afresh. Alleging the aforesaid order, the petitioner has filed the present writ petition on the ground that there is no provision to proceed with a brother of the deceased and therefore the remand order passed by the Tribunal is liable to be set aside.

3. Learned counsel for the 2nd respondent would submit that the liability of the petitioner and others will not be decided at this stage. Even according to the petitioner, without providing an opportunity to him and others, the surcharge proceedings has been passed. Therefore, the Tribunal has considered the said prayer and allowed the appeal, remanding the matters to be decided afresh, after providing necessary opportunity to the parties concerned. The petitioner's liability would only be decided in the enquiry conducted by the 1st respondent. Therefore, the writ petition is liable to be dismissed. Learned counsel for the 2nd respondent also relies upon the decision issued by a Division Bench of this Court in the case of M.K.S. Balasubramanian vs. The Kancheepuram Central Co-operative Bank Ltd., reported in 2010 (2) CTC 569, wherein it is held as follows in paragraph 12 :

' 12. Thus, the respondent is not justified in imposing the condition namely reserving its right to proceed disciplinary proceedings while allowing the appellant to retire from his service on 31.3.2005. The direction given by the learned Single Judge to the respondent to retain the amount of Rs.2,69,933/- from terminal benefits payable to the appellant is perfectly justified as the respondent can effect recovery of the loss sustained after initiating surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, which is extracted hereunder :

" 87. Surcharge .-- Where in the course of an audit under Section 80 or an inquiry or an inquiry under section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in himself or any person specially authorised by him in his behalf, of his own motion or on the application of the Board liquidator or any

creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the Rules, the Bye-laws as the Registrar or the person authorized aforesaid thinks just"

The above provision empowers to proceed against a person whether he was an officer or a servant, either past or present and even if the person is dead recovery can be made from the legal heir of the said person if he inherited the property. In the decision reported in U.P. State Sugar Co-operation Ltd. and others v. Kamal Swaroop Tondon 2008 (2) SCC 41, it is held that a retired employee could be proceeded to recover the loss caused by him and amount could be recovered from the retirement benefits. In para 40, it is held thus :

" ... in our considered opinion, the High Court was working in holding that the proceedings were initiated after the respondent retired and there was no power, authority or jurisdiction with the Corporation to take any action against the writ petitioner and in setting aside the orders passed against him. In our judgment, proceedings could have been taken for the recovery of financial loss suffered by the Corporation due to negligence and carelessness attributable to the respondent employee. The impugned action, therefore, cannot be said to be illegal or without jurisdiction and the High Court was not right in quashing the proceedings as also the orders issued by the Corporation. The

Appeal, therefore, deserves to be allowed by setting aside the order of the High Court. "

Therefore, it is clear from the aforesaid decision that even if a person is dead, recovery can be made from the legal heir of the said person if he has inherited the property. The said aspect has been considered by the 1st respondent. Therefore, the court below has rightly allowed the appeal filed by the petitioner and has remanded the case to be considered by the 1st respondent afresh.

4. In the light of the aforesaid facts, circumstances and the decision cited supra, this Court is not inclined to interfere with the order passed by the Tribunal. However, the 1st respondent is directed to consider the proceedings in accordance with law and pass orders uninfluenced by the observation made in this writ petition.

5. Therefore, the Writ Petition fails and the same is dismissed. Consequently, the connected M.P is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

avr
To

1.The Deputy Registrar of
Co-operative Societies
Gobichettipalayam Circle
Bajanaikoil Street
Pudupalayam - 638 416
Gobichettipalayam Taluk
Erode District.

+1cc to Mr.N.Manokaran, Advocate sr.48704

+1cc to T.P.Saritha, Advocate sr.48438

+1cc to Government Pleader sr.49414

W.P. No. 21103 of 2015 and
M.P. No.1 of 2015

ss(22/9/2017)