

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2017

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.2139 of 2015
and
M.P.Nos.1 and 2 of 2015

C.Govindaraj

.. Petitioner

Vs

1. The Deputy Registrar of Cooperative Societies, Ariyalur Circle, Ariyalur, Ariyalur District.
2. The President, Koovathur Primary Agricultural Co-operative Credit Society, Koovathur, Udayarpalayam Taluk, Ariyalur District.
3. P.Rajendran, Secretary In-charge, Koovathur Primary Agricultural Co-operative Credit Society, Koovathur, Udayarpalayam Taluk, Ariyalur 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 pertaining to the order of the Principal District and Sessions Judge, Ariyalur in C.M.A.C.S.No.1 of 2013 dated 04.10.2013 and the order passed by the 1st Respondent in Na.Ka.No.2063/2012, dated 28.02.2013.

For Petitioner : Mr.K.Sannjay
For Respondents : Mr.V.Selvaraj,
Addl. Government Pleader for R1
: Mr.L.P.Shanmugsundram for R2

O R D E R

This writ petition has been filed seeking to quash the order of the Principal District and Sessions Judge, Ariyalur in C.M.A.C.S.No.1 of 2013 dated 04.10.2013 and the order passed by the 1st Respondent in Na.Ka.No.2063/2012, dated 28.02.2013 and pass such further orders.

2. Learned counsel for the petitioner submitted that the petitioner was working as a Salesman under Foreign Service Terms in Fair Price shops run under the control of the Koovathur Primary Agricultural Co-operative Credit Society, Koovathur, Udayarpalayam. The petitioner was served with a notice in Na.Ka. No. 2063/2012 SaPa dated 14.09.2012 by the 1st respondent, under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. In the aforesaid notice, charges were levelled against the petitioner along with two other employees for causing deficiency in the assets of the Society, by breach of trust, to an extent of Rs.2,50,013.40 and to pay an interest for the said amount @ 18% per annum to the society. In response to the said notice, the petitioner submitted his explanation on 19.10.2012. The 1st respondent, without accepting the explanation, passed the surcharge order on 28.02.2013 directing the petitioner to pay Rs.2,16,684.35 with an interest of 18% per annum, till the date of realisation together with two other employees. Challenging the aforesaid order, the petitioner preferred an appeal under Section 152(1) in C.M.A. CS. No.1 of 2013 before the Principal District and Sessions Judge, Ariyalur. The Tribunal, by its order dated 04.10.2013, modified the surcharge order passed by the Original Authority, by deleting the value of gunny bags of Rs.24,337.80. Learned counsel for the petitioner has specifically raised the ground before this Court that the Appellate Tribunal has not considered the amount of Rs.1,20,328.70 already paid by the petitioner towards the alleged deficit in stock, along with interest as directed by the authorities. Therefore, the petitioner has preferred the present writ petition to set aside the order passed by the Tribunal.

3. The learned counsel for the petitioner would submit that the petitioner has already paid a sum of Rs.1,20,328.70 and the relevant receipts have also been filed before the Tribunal, but the Tribunal has not considered and appreciated the case of the petitioner. The petitioner has also filed the receipts towards remittance of the said amount to the society, in the additional typeset of papers before this Court. Therefore, the order passed by the Tribunal is liable to be set aside and the petitioner pleaded to consider the said documents after affording an opportunity of hearing to him.

4. Learned Additional Government Pleader would submit that the petitioner has willfully refused to part with the required documents of the society and have made only part payments direct to the Society. Hence, he is now stopped from making new challenges against his submissions in the enquiry proceedings. Therefore, the writ petition is liable to be set aside.

5. Heard the rival submissions made by the learned counsel for the parties and perused the materials available on record.

6. The petitioner has filed an appeal under Section 152(1) of the Tamil Nadu Co-operative Societies Act, 1983 before the Principal District and Sessions Judge, Ariyalur in C.M.A. CS. No.1 of 2013. By order dated 04.10.2013 the appeal filed by the petitioner was partly allowed. Challenging the said order, the petitioner is before this Court. The appellant raised various grounds on the appeal before the Tribunal. In the said order, the Tribunal has held that the appellant Govindaraj has appeared before the Enquiry Officer on 26.02.2013 and has made a statement that he has gone through the records in the society and was not willing to cross examine any person in the proceedings. The petitioner himself had declared that he perused the accounts of the Society and has obtained adequate time for remittance of the due amounts to the Society. It is also seen from the aforesaid order that the petitioner has made payments and the said amount has been reflected in the surcharge proceedings. Hence, the Tribunal has rejected the contentions of the petitioner, however, had modified the order by deleting the value of the damaged gunny bags to the tune of Rs.24,337.80 from the surcharge order.

7. It is the submission of the learned counsel for the petitioner that the Tribunal has failed to consider the remittances made by the petitioner, though the said receipts have been marked as exhibits before the Original Authority as well as the Appellate Authority. There is no discussion about the said amount, in the findings rendered by the Tribunal. Learned Additional Government Pleader also fairly accepted that there is no discussion regarding the remittances of the amount, as per the receipts filed in the additional typeset of papers. It is an admitted fact that the remittance of Rs.1,20,328.70 made by the petitioner, though marked as documents before the Authorities, has not been considered by the Tribunal. Further, the Original Authority and the Tribunal have not stated the reasons for not considering the remittance of the said amount to the society despite the plea raised in the grounds of appeal. Therefore, this Court is inclined to interfere with orders

passed by the Tribunal and the Original Authority and the same is liable to be set aside.

8. Accordingly the writ petition is allowed and the orders passed by the Principal District and Sessions Judge, Ariyalur in C.M.A. CS. No.1 of 2013 dated 04.10.2013 and the order passed by the 1st respondent in Na.Ka. No. 2063/2012 dated 28.02.2013 are set aside and the same is remanded to the Tribunal, to consider and pass orders afresh, after affording an opportunity to the parties concerned and considering the aforesaid grounds raised by the appellant in the appeal. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

avr
To

1.The Principal District and Sessions Judge,
Ariyalur.

+1cc to M/S.L.P.Shanmugasundaram, Advocate Sr. 44943
+1cc to MrK.Subburam, Advocate Sr. 45119
+1cc to the Government Pleader, Srf. 45305

W.P.No.2139 of 2015
and

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AR (IV)
VR (17/8/2017)

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