

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5691 of 2013

and

M.P. Nos. 2 & 3 of 2013

K. Veerasamy

.. Petitioner

vs.

1. The Presiding Officer
Cooperative Tribunal/
Principal District Court
Cuddalore.

2. The Deputy Registrar of
Co-operative Societies,
Virudhachalam Circle
Virudhachalam
Cuddalore District.

3. The Special Officer
I.I. 556, Tholar Primary Agricultural
Co-operative Credit Society Ltd.,
Tholar Village & Post
Tittagudi Taluk,
Cuddalore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings Na. Ka. 1094/2010 Sa.Pa dated 11.10.2010 confirmed by the Coop. Tribunal, Cuddalore in its order passed in Cooperative C.M.A. NO.53/2011 dated 26.09.2012 and quash the same and pass such further orders.

For Petitioner : Mr.C. Prakasam
For Respondents : R1 Tribunal

Mr. L.P. Shanmugasundaram for R2

Mr.R. Parthiban for R3

ORDER

This writ petition has been filed to quash the order passed by the 2nd respondent in his proceedings Na. Ka. 1094/2010 Sa.Pa dated 11.10.2010 confirmed by the Coop. Tribunal, Cuddalore in its order passed in Cooperative C.M.A. NO.53/2011 dated 26.09.2012.

2. The learned counsel for the petitioner submitted that the petitioner was working as a Clerk in the 3rd respondent Society in the year 1998. Whiles, the 2nd respondent ordered enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, for the mal-practices committed in the books of accounts in the 3rd respondent Society. Based on the enquiry report, the 2nd respondent initiated proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 against the petitioner and the other employees of the 3rd respondent Society. The cashier submitted a representation admitting that he alone has committed the misappropriation of funds and the petitioner and other employees are no way connected with the said misappropriation. However, the enquiry officer submitted his report falsely implicating the petitioner also and the 2nd respondent passed an award dated 11.10.2010, holding that all the employees of the 3rd respondent society are jointly and severely responsible for the loss sustained by the society. Hence, the petitioner preferred an appeal before the Co-operative Tribunal in Coop. C.M.A. No. 53 of 2011. Without considering the contentions of the appellant, that the then Cashier of the Society C. Paramasivam had admitted the liability towards the loss caused to the 3rd respondent Society and that the said Paramasivam has not filed any appeal against the order of the 2nd respondent, the Tribunal dismissed the appeal. Challenging the said order of dismissal, this writ petition has been filed before this Court.

3. The learned Special Government Pleader representing the 2nd respondent would submit that the petitioner has filed an appeal in Coop. C.M.A. No. 53 of 2011, before the Co-operative Tribunal, stating that one C. Paramasivam, cashier of the 3rd respondent society had admitted the liability, for the loss caused to the society. The Tribunal after considering the contentions made by both sides have rightly dismissed the appeal, by its order 26.09.2012. The Tribunal has rejected the ground of delay raised by the petitioner, in view of the decision issued by the Division Bench of this Court in the case of S.V.K.Sahasraman Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai and others reported in (2008) 8 MLJ 231, wherein it is held that the time limit for concluding the enquiry is not mandatory and it is only discretionary. The Tribunal has also held that the appellant

and other employees have not discharged their duties and responsibilities in consonance to their designation and position and mere accusation against the Cashier cannot be taken into consideration and held that the writ petitioner is also equally responsible for the loss sustained by the society. Therefore, writ petition is liable to be dismissed.

4. Considered the rival submissions made by the learned counsel for the parties and perused the material available on record.

5. It is submitted by the learned counsel for the petitioner, that the enquiry was not completed within the prescribed period as contemplated under Section 87 (1) of the Act. The said point has been considered by the Division Bench of this Court in S.V.K.Sahasraman Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai and others reported in (2008) 8 MLJ 231 and in the 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. In view of the said decisions, the contention of the petitioner is liable to be rejected. However, the submission of the learned counsel for the petitioner that in view of the admission made by the said Paramasivam, the petitioner and other employees are not responsible for the recovery of the said amount under the surcharge order, requires consideration. There is some force in the said contention of the petitioner. Since one of the employees, namely, C.Paramasivam, Cashier had admitted his liability to pay the loss sustained by the Society and since the said employee also has not filed any appeal under Section 87 of the Act, there is no embargo or legal impediment for the 3rd respondent society, to go against the then cashier Paramasivam and to recover the said loss sustained by the society. The petitioner has not made any submission with regard to the duties and responsibilities of the other employees, in the society. The Tribunal has elaborately discussed the duties and responsibilities of the petitioner under the by-laws and have held that the petitioner and other employees are also jointly responsible and liable to pay the loss sustained by the society. However, in view of the admission made by the then cashier C.Paramasivam and as the award passed against the said Paramasivam has become final, the 2nd respondent is permitted to proceed against the Cashier C. Paramasivam, for recovery of the loss sustained by the society. In any event, if the 3rd respondent Society is unable to recover the said amount from the then Cashier C. Paramasivam, then the 3rd respondent society is at liberty to proceed against the petitioner and other employees, to recover the award amount, in accordance with law, after providing an opportunity to them.

6. At this juncture, the learned counsel for the 3rd respondent society submitted that, due to the pendency of the writ petition, the society has not initiated any action for recovery of the award amount against C. Paramasivam, the Cashier of the Society. In view of the above order passed by this Court, the 3rd respondent Society may be permitted to take action for recovery of the said amount.

7. Accordingly, the 3rd respondent is directed to initiate action for recovery of the amount from the said C. Paramasivam, in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. The writ petition is dismissed, with the above observation. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Presiding Officer,
Cooperative Tribunal/
Principal District Court
Cuddalore.

2. The Deputy Registrar of
Co-operative Societies,
Virudhachalam Circle
Virudhachalam
Cuddalore District.

+1cc to Mr.L.P.Shanmugasundram, Advocate SR.No.69003

+1cc to the Government Pleader SR.No.69438

+1cc to R.Parthiban Advocate SR.No.68253

+1cc to C.Prakasam, Advocate SR.No.68996

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and

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SDR 20.11.2017