

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.19991 of 2016 and
WMP No.17230 of 2016

R.Varadharajan

..Petitioner

Vs.

1.The Co-operative Tribunal/

District Court,

Thiruvannamalai,

Thiruvannamalai District.

2.The Deputy Registrar of

Co-operative Societies,

Thiruvannamalai Circle,

Thiruvannamalai & District.

3.The President,

H.H.143, Mallavadi Primary Agricultural

Co-operative Credit Society,

Mallavadi - 606 805,

Thiruvannamalai Taluk & District

..Respondents

PRAYER:

The Writ Petition is filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings No.14/97-98, dated 12.02.1999 confirming the order passed by the Co-operative Tribunal/District Court, Thiruvannamalai, Thiruvannamalai District in C.T.A.No.2/2003, dated 24.03.2011 and the quash the same.

For petitioner :Mr.C.Prakasam

For R1 & R2

:Mr.V.Selvaraj,

Additional Government Pleader

For R3

:Mr.L.P.Shanmugasundaram,

Special Government Pleader

ORDER:

According to the petitioner, the second respondent passed an award in surcharge proceedings No.14/97-98 dated 12.02.1999 imposing the liability on the petitioner to the tune of Rs.25,340/- for the money loss to the third respondent Society due to negligence of the petitioner. Challenging the above said award passed in surcharge proceedings, the petitioner preferred an appeal before the first respondent Tribunal by raising the following grounds.

i) The petitioner is not guilty under Section 87 of the Tamil Nadu Cooperative Societies Act and there is no wilful negligence on the part of the petitioner for the money loss to the Society.

ii) The petitioner was not the Secretary of the third respondent Society at the relevant point of time and hence, he cannot be held responsible for the loss to the Society.

2. The Tribunal, after considering the contention of both parties, dismissed the appeal filed by the petitioner and confirmed the award passed by the second respondent. Challenging the said orders, the petitioner has preferred this Writ petition before this Court.

3. According to the learned counsel for the petitioner, the petitioner was a clerk in the third respondent society. He has been wrongly implicated under Section 81 of the Act in the enquiry report. The petitioner was not the Secretary at the relevant point of time and therefore, as per the bye-laws, the petitioner, being a clerk, is not responsible for the alleged loss caused to the Society. Since no action was taken for recovery of the outstanding amount from the members of the society within the limitation period, the order passed by the Tribunal is liable to be set aside.

4. Mr.V.Selvaraj, learned Additional Government Pleader would submit that the award has been passed by the second respondent in Surcharge proceedings No.14/97-98 dated 12.02.1999. Before passing the aforesaid award, the petitioner was given opportunities to put forth his claim for the denial of the aforesaid money loss caused to the society. As per the bank resolution No.1 dated 27.03.1992 and bank resolution No.3 dated 27.07.1992, the employees of the bank are responsible and therefore, the contention of the petitioner that there was no resolution available on record is not sustainable. The fact that the petitioner was not the Secretary during the relevant point of time was also placed before the authority. Based upon the enquiry report, the second respondent has initiated proceedings

under section 87 of the Tamil Nadu Cooperative Societies Act and passed an award against the petitioner to the tune of Rs.25,340/-. A show cause notice dated 27.03.1998 was issued by the second respondent directing the petitioner to file his objection and also the details of the debts responsible for the aforesaid loss. The said show cause notice was served on the petitioner and the petitioner also submitted his explanation on 16.04.1998. Thereafter, the second respondent issued summon dated 04.09.1998 fixing the date of hearing on 23.09.1998 for personal hearing. Even though the petitioner appeared for personal hearing, at his request, the same was adjourned from time to time and the enquiry was concluded on 27.11.1998. Based on the related documents and also the requisition letter dated 27.10.1998 given by the petitioner requesting to pass orders on the basis of his earlier explanation, award has been passed by the second respondent. Against that award, the petitioner has preferred an appeal before the Tribunal. The ground raised by the petitioner in the appeal that he was not responsible to recover the said debts, was rejected by the tribunal and the appeal filed by the petitioner was dismissed.

5. I have considered the submissions made by the learned counsel on either side and also perused the materials available on record.

6. Perusal of the records would show that opportunities were given to the petitioner to put forth his objection before the second respondent. The petitioner has not submitted any explanation to disprove the allegations raised in the show cause notice for the loss caused to the society to the tune of Rs.25,340/-. The petitioner has not produced any substantial materials before the second respondent as well as the tribunal that he is not responsible for the loss sustained to the society. In the absence of any materials in favour of the petitioner, the contention raised by the petitioner cannot be accepted and the same is liable to be rejected. Therefore, there is no error or illegality in the order passed by the Tribunal and this court is not inclined to interfere with the order passed by the Tribunal.

7. The Writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1. The Co-operative Tribunal/
District Court,
Thiruvannamalai,
Thiruvannamalai District.

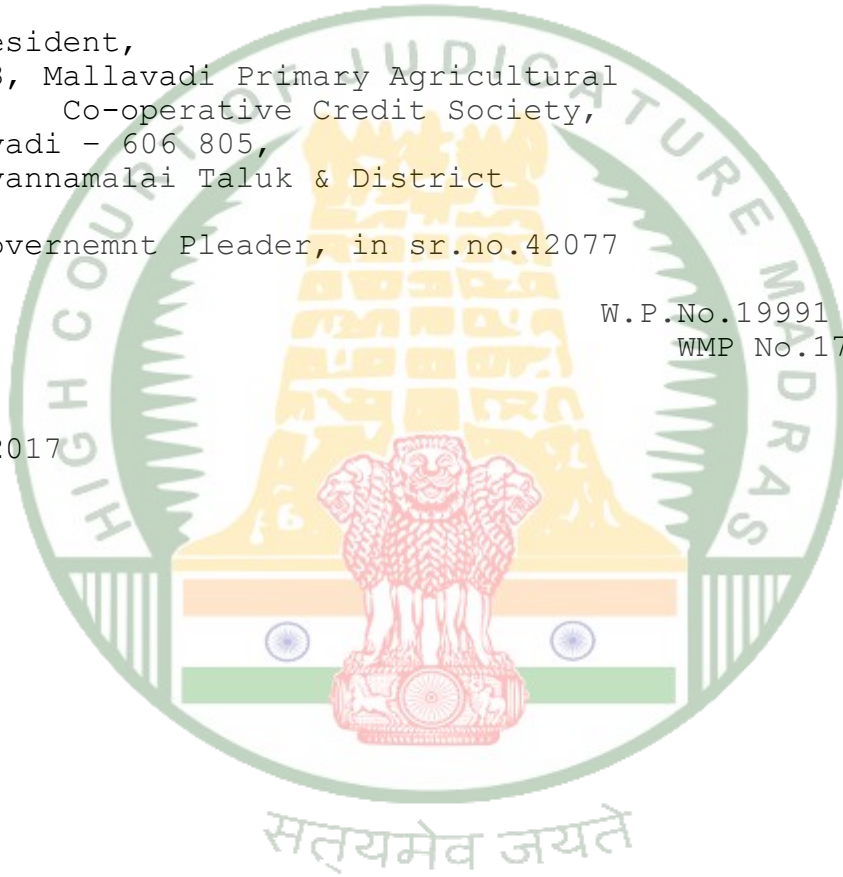
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Mallavadi - 606 805,
Thiruvannamalai Taluk & District

+1cc to Governemnt Pleader, in sr.no.42077

W.P.No.19991 of 2016 and
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MN (CO)
NR 11/08/2017



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