IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.9.2017

CORAM:
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No.7892 of 2011

S.NO.205 B.KOMARAPALAYAM CO-OPERATIVE URBAN BANK LTD REP. BY ITS SPECIAL OFFICER
B.KOMARAPALAYAM,
TIRUCHENGODE TALUK, NAMAKKAL DISTRICT. ... PETITIONER

Vs.

1 THE PRINCIPAL DISTRICT JUDGE
DISTRICT COURT NAMAKKAL.

2 THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES,
NAMAKKAL CIRCLE, NAMAKKAL DISTRICT.

3 A.CHANDRASEKARAN
S/O.ANGAMUTHU PILLAI NO.13/4 THOGAMALAI CHETTY CHENDU, BODINAYAKKANUR POST, THENI DISTRICT-625 513.

4 S.THIAGARAJAN
S/O.GURUNATHAN CHETTIAR, NO.15/5 KEERAIKARA STREET, BHAVANI POST, ERODE DISTRICT. RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the Judgement and Decree passed in C.M.A.(C.S) No.26 of 2002 dt.8.9.2010 on the file of the 1st respondent and quash the same.

For Petitioner	:	Mr.M.S.Palaniswamy
For Respondent No.2	:	Mr.L.P.Shanmugasundaram Spl. Govt. Pleader
For Respondent No.3	:	Mr.S.Umapathi
For Respondent No.4	:	No appearance

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O R D E R

The Second respondent herein has initiated proceedings under Section 81 of the Tamilnadu Co-operative Societies Act. On the basis of the enquiry report, Surcharge proceedings under Section 87 of the said Act was passed against the third respondent. Challenging the said order, the third respondent has preferred an appeal in C.M.A.(C.S) No.26 of 2002 before the first respondent tribunal on various grounds. The first respondent tribunal set aside the Surcharge award passed by the second respondent and allowed the appeal by holding that the charges against the third respondent was not proved by the petitioner Society. Challenging the said judgment passed by the first respondent tribunal, the petitioner Society has filed the present writ petition before this Court.

2 According to the learned counsel for the petitioner, the third respondent before the tribunal has contended that the third respondent being a Secretary and the fourth respondent being a Special officer are responsible for sanctioning of the loan excess to the limit prescribed by the Reserve Bank of India and thereby the third and fourth respondents have violated the Circular issued by the Reserve Bank of India under Section 18 and 24 of Banking Regulation Act, 1949. Both the Secretary and the Special Officer have issued loans to the borrowers to the extent of 70% of the share capital. The issue of the said loan is excessive over and above the ceiling limit. Therefore, it is clear violation under Section 84 of the Banking Regulation Act, 1945. So far as the Charge No.2 namely, purchase of locker for Rs.1,05,532/- is concerned, Surcharge proceedings has been passed against the third respondent, subsequently, the said amount has been recovered. Therefore, counsel for the petitioner Bank is not pressing the writ petition against the third respondent in so far as the second charge is concerned. In so far as the third charge namely, hiring of taxi for the use of respondents No.3 and 4 to go to various places and thereby caused loss to the tune of Rs.22,025/-. There is misappropriation by the then Special Officer and the Secretary of the Society. The said charges have been established before the second respondent tribunal. Without considering the materials placed, the first respondent tribunal erroneously set aside the Surcharge order passed by the second respondent. Therefore, the present writ petition has been filed before this Court.

3 The learned counsel for the third respondent would submit that the tribunal has considered the grounds raised by the third respondent that the then Special Officer namely, 4th respondent is responsible for the misappropriation and loss sustained to the Society. As per the by-laws, 4th respondent is

a competent officer for sanctioning of the loan to the borrowers and also in the absence of the Board, the Special Officer is competent to take a decision for the Society. Hence, the third respondent being the Secretary of the Society, only disbursed the said amount to the borrowers. Therefore, the third respondent is not responsible for the misappropriation or loss sustained to the Society. Hence, tribunal has rightly appreciated the case of the third respondent and set aside the Surcharge order passed by the second respondent.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondents 2 and 3 and perused the materials available on record.

5 It is not a disputed fact that Surcharge order has been passed under Section 87 of the Tamilnadu Cooperative Societies Act against the third respondent as well as the Special Officer for the loss sustained to the Society for a total sum of Rs.5,15,916/-. The fourth respondent did not prefer any appeal against the Surcharge order passed by the second respondent. Therefore, the order passed against the Special officer namely fourth respondent herein has become final. The third respondent alone has preferred an appeal before the first respondent tribunal. Challenging the judgment and decree passed by the first respondent tribunal, the President of the Komarapalayam Co-operative Urban Bank has filed the present writ petition.

6 On perusal of the charges, dispute under section 87 of the Tamilnadu Cooperative Societies Act, three charges have been framed against the third respondent and the Special officer/4th respondent. Charge No.1 is concerned, violation of Section 18 and 24 of Banking Regulation Act, 1949. According to the learned counsel for the petitioner bank, then Special officer and the third respondent disbursed the loan, more than the 70% of the share capital. The disbursement of loan is beyond the ceiling limit. Hence, there is violation of the provisions of Banking Regulation Act, 1949. Therefore, the impugned award has been passed by the second respondent against the third respondent and the then Special officer, namely fourth respondent.

7 On perusal of the grounds raised by the third respondent before the tribunal that the third respondent is not responsible for the violation of the provisions of Banking Regulation Act, 1949 since he is not a competent authority to sanction loan excess to the ceiling limit. The Special officer who is responsible for sanctioning of loan excess to the ceiling limit and disbursal of the loan amount to the borrowers. On the basis of the said contention, the tribunal has held that the

first charge against the third respondent is not proved by relying upon the by-laws of the Society. Clause 23 (c) of By-law states as follows:

> ''The Secretary shall be responsible for the Executive administration of the Bank, subject to the control of the President. He shall in consultation with the President call for meetings of the committee. It shall be competent to the Secretary to incur petty contingent expenditure subject to a maximum of rupees five for any item. Should the Secretary require relief from work, it shall be competent for the President to grant relief making suitable arrangements for the conduct of work. The Secretary shall have power to censure, fine, any member of the establishment provided that the amount of fine should not exceed Rs.5/- in any case and that to with the approval of the President and an appeal lies to the authority competent mentioned in special by-laws relating to service conditions of employees.''

8 By considering the said clause, the Secretary is also responsible for any loss sustained to the Society jointly and severally. Therefore, unless the third respondent has placed any relevant materials to prove that there is no wilful negligence on the part of the third respondent. In the absence of any materials Surcharge award passed against the third respondent in respect of Charge No.1, is valid, therefore, the judgment is liable to be set aside.

9 In so far as the second Charge is concerned, counsel for the petitioner himself has conceded that loss sustained to the Society has been recovered. Therefore, said charge has been dropped against the third respondent. Yet another Charge namely, Charge No.3 is concerned, the third respondent and the then Special Officer have paid the amount towards loss sustained by way of hiring taxi to attend meeting. The tribunal without appreciating the facts and also without referring any document, simply accepting the contention of the third respondent herein, has held that the Special officer alone is responsible. On the basis of the said finding, counsel for the third respondent would submit that the decision taken only by the then Special officer in the absence of the Board. The third respondent being the Secretary of the Society is only acted and implemented the decision of the Special Officer. However, the third respondent has not placed any materials before the tribunal that there is no wilful negligence on the part of the third respondent for the loss sustained to the Society. The only contention of the third

respondent is that as per the By-law, third respondent is not responsible, the Special officer alone is responsible for the loss sustained to the Society. By considering the aforesaid clause in the By-law, it is clear that the third respondent being the Secretary of the Society is also responsible for the loss sustained to the Society. Therefore, unless the third respondent has placed any materials to show that there is no misappropriation or there is no violation of the provisions of Banking Regulation Act or there is no wilful negligence on the part of the third respondent to disprove the charges made against the third respondent and in the absence of any materials, the finding of the tribunal is unsustainable in law. Therefore, this Court is inclined to interfere with the judgment passed by the first respondent tribunal and set aside the judgment.

10 At this stage, counsel for the third respondent submits that third respondent was dismissed from service and the Surcharge award amount along with interest comes to more than Rs.15 lakhs. He further submitted that third respondent having no other means to repay the huge amount, as the award has been passed along with interest at the rate of 21% p.a. and hence seeks indulgence of this Court for reduction of the interest portion in the light of the decision of the Division Bench of this Court in the case of THE SECRETARY, K.1161 KALINGARAYANPALAYAM PRIMARY AGRICULTURAL CO-OP. CREDIT SOCIETY LTD. VS. CHINNUSAMY AND ANOTHER [2017(3) L.W. 565]. Counsel for the petitioner fairly submitted that in the event of any request made by the third respondent, petitioner Bank will consider the reduction of interest.

11 In view of the aforesaid facts and circumstances, the impugned judgment passed by the first respondent is quashed and the writ petition stands allowed. However, it is open to the third respondent to make representation to the petitioner Bank for the reduction of interest. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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TO

1 THE PRINCIPAL DISTRICT JUDGE, NAMAKKAL.

2 THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES,
NAMAKKAL CIRCLE, NAMAKKAL DISTRICT.

+1cc to Mr.M.S.PALANISAMY, Advocate, S.R.No. 70148/17

+1cc to the Government Pleader, S.R.No. 70814/17

+1cc to Mr.S.UMAPATHY, Advocate, S.R.No. 70154/17

W.P.No.7892 of 2011

GP(CO)
TR(17/11/2017)