

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.2157 of 2012
&
M.P.No.1 of 2012

K.Krishnasamy

... Appellant

Vs.

1. The Principal District Judge,
The Tribunal for Co-operative Cases,
Coimbatore.
2. The Deputy Registrar of Co-operative Societies,
Pollachi Circle, Pollachi,
Coimbatore - 642 001.
3. The Special Officer,
K-97, Kinathukadavu Primary Agricultural
Co-operative Bank,
Kinathukkadavu, Pollachi Taluk,
Coimbatore - 642 109.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Appeal to set-aside the order dated 08.03.2012 made in W.P.No.7124 of 2005, on the file of this Court.

W.P.No.7124 of 2005 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent pertaining to his proceedings in Na.Ka.No.7418/91/Sa.Pa., dated 31.07.1991 and of the 1st respondent pertaining to his proceedings in C.M.A.No.107 of 1995 and quash the orders dated 05.09.2001, 31.07.1991 and 05.09.2001 respectively.

For Appellant : Mr.R.Sivakumar

For Respondents : R1 - Tribunal
Ms.T.Girija
Government Advocate for R2
No appearance for R3

O R D E R

[Order of the Court was made by P.VELMURUGAN, J.]

The writ appeal is arising out of the judgment dated 08.03.2012 made in W.P.No.7124 of 2005.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the writ petitioner aggrieved by the orders passed by the second respondent pertaining to his proceedings in Na.Ka.No.7418/91/Sa.Pa., dated 31.07.1991 and of the first respondent pertaining to his proceedings in C.M.A.No.107/1995, dated 05.09.2001 and quash the orders dated 31.07.1991 and 05.09.2001 respectively.

3. The case of the writ petitioner, before the writ Court, is as follows:

3.1 The petitioner was the former Secretary of the third respondent/Kinathukkadavu Primary Agricultural Co-operative Bank Limited, which is a Co-operative Society governed by the Tamil Nadu Co-operative Societies Act. Originally he was appointed as a Clerk in the third respondent society. One Mr.R.Ponnusamy was then working as the Secretary of the third respondent society. Mr.R.Ponnusamy was placed under suspension with effect from 30.11.1978. Against the said vacancy, the petitioner was promoted and appointed as Secretary of the said society. Subsequently, the suspension of Mr.R.Ponnusamy was revoked and consequently, the petitioner was reverted back to the post of Clerk with effect from 07.06.1990. Thereafter, by letter dated 07.06.1990, the then Special Officer of the third respondent, directed the petitioner to hand over charge to Mr.R.Ponnusamy. The said letter was received by the petitioner on 23.06.1990, but he did not obey the same. According to the third respondent, he simply disappeared and so, the society could not function. Therefore in order to carry on the day to day affairs of the society, the then Special Officer had to break open the lockers etc., in the presence of the Officials as well as in the presence of the police. It is alleged by the third respondent that on such break opening, it was found that Indhra Vikas Patras worth Rs.86,100/- and the Employees Provident Fund Investment and Deposit Bonds worth Rs.2,000/- were missing. By letter dated 31.07.1990, the then Special Officer submitted a complaint to the Deputy Registrar of Co-operative Societies, Pollachi, regarding the above. The management of the society was then taken over by the elected board on 10.10.1990. After the board so took over the charge, the petitioner was again appointed as Secretary of the society and Mr.R.Ponnuswamy was reverted as Clerk. However, the appointment of the petitioner as Secretary was subsequently cancelled by the board.

3.2 In those circumstances, a charge memo was issued to the petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act by the Deputy Registrar of Co-operative Societies on a dispute raised by the third respondent. According to the said proceedings, three charges were framed against the petitioner. The first item is that the petitioner caused loss to the tune of Rs.10,668/- for taking steps to break open the lockers etc., for the smooth functioning of the society. The second item of the charge is that the petitioner caused loss to the tune of Rs.1,350/- by forcing the Special Officer to break open the locks worth Rs.1,350/-. The third item of the charge is that the petitioner caused loss to the tune of Rs.88,100/- which is the matured amount towards the Indhra Vikas Pathiras and the deposits. The petitioner submitted his explanation denying the above charges. According to him, the Indhra Vikas Patras were not taken away by him and they were very much available in the society. Thereafter, the second respondent, by his proceedings in Na.Ka.No.7418/91/Sa.Pa., dated 31.07.1991, passed an award directing the petitioner to pay a sum of Rs.1,88,218/- with interest at the rate of 18% per annum. According to the award, the petitioner is liable to pay the said amount under all the three charges, as the charges, according to the Enquiry Officer, stood proved.

4. Aggrieved over the same, the appellant / petitioner filed an appeal before the Co-operative Tribunal/Principal District Judge, Coimbatore, in Co-operative Civil Miscellaneous Appeal No.107 of 1995. The Tribunal, by an order dated 05.09.2001, dismissed the appeal. Aggrieved over the order passed by the Tribunal, the petitioner has filed the Writ Petition in W.P.No.7124 of 2005.

5. As regards charges 1 and 2 framed against the petitioner, the learned Single Judge held as follows:-

"5. So far as charges 1 and 2 are concerned, the learned counsel for the petitioner would submit that the petitioner was not responsible for breaking open the lockers etc., and therefore he is not liable to pay Rs.10,668/- which was the amount spent for opening the lockers and Rs.1350/- which was the cost of the lock which was broken in the process. But a perusal of the award of the second respondent which came to be confirmed by the Tribunal would go to show that despite number of notices issued to the petitioner, he did not go over to the society to co-operate with the Special Officer to open the lockers etc., by using the key. On facts, two authorities below have found the petitioner guilty. Unless the said finding is perverse, in my considered opinion, it is not at all permissible for this court to take a different view.

For a moment, I have to state that this Court cannot convert itself into a court of appeal or revision. In a writ proceedings, when the factual finding given by the two authorities cannot be stated to be perverse, in my considered opinion, it is not possible for this Court to upset the said findings given by the authorities. Therefore, insofar as Items 1 and 2 are concerned, I do not find any merit in the contention. Therefore, I reject the same."

6. The learned Single Judge, in the concluding paragraph No.10, has held as follows:-

"10. Though it is stated by the third respondent that these Patras were not found in the society in the year 1990 when the lockers were forced open by the Secretary, it is not explained to the Court as to where from these Indhra Vikas Patras and Bonds were noticed in the year 2011. It is not explained to the Court as to where these documents were kept all these years. Therefore, I find some force in the argument of the learned counsel for the petitioner that these Patras and other documents were all lying only in the society. But on that score, the petitioner cannot be exonerated in full as there was failure on the part of the petitioner to go over to the society and produce these documents from where they were kept. To that extent, he is also responsible for the loss caused to the society. Thus, I find that not only the petitioner but the third respondent is also at fault for the loss caused for the period between the date of maturity of each Indhra Vikas Patras and the Bond till the date of encashment. Therefore, I am of the view that for the loss caused to this period, the petitioner is liable to pay interest. Though it is stated that the third respondent is entitled for interest at the rate of 18% having regard to the above facts and circumstances of the case, I am of the view that it would be in the interest of justice to direct the petitioner to pay interest at the rate of 10% per annum."

7. The learned Single Judge, vide order dated 08.03.2012, had partly allowed the writ petition, against which the present Writ Appeal is filed.

8.1. The learned counsel for the appellant would submit that the learned Judge erred in holding that the appellant has failed to go over to the third respondent Society and produce those certificates from where they were kept. The learned Judge failed to consider that on 07.06.1990 the appellant was

illegally reverted from the post of Secretary to Clerk and in spite of the interim order passed by the competent civil Court, he was not permitted to join duty. To circumvent the Court order, the appellant was suspended from the third respondent society by order dated 23.06.1990. Ultimately, after conclusion of the enquiry, he was dismissed from service by 31.12.1991. Therefore, in this entire episode, the appellant going to the premises of the third respondent has never arisen and in fact it was the third respondent who had successfully prevented the entry of the appellant into their office.

8.2 The learned counsel for the appellant would further submit that the learned Judge erred in holding that the appellant is liable to pay interest at the rate of 10% from the date of maturity of each certificate and bond till the date of its realization in the year 2011. The learned Judge having held that the third respondent Society has not explained to this Court as to where from these Indra Vikas Certificates were noticed in the year 2011 and also they have not explained to the Court as to where these certificates were kept all these years, ought to have allowed the Writ Petition in toto. The learned Judge having held that the third respondent is also at default for the loss caused to the society, ought not to have directed the appellant to pay the interest at the rate of 10% for the delay in encashing those certificates, which is a failure on the part of the third respondent. For the fault of the third respondent the appellant cannot be made to suffer.

8.3 The learned counsel for the appellant would further submit that the learned Single Judge failed to consider that it is the specific case of the appellant that the alleged loss caused to the Society is only a presumptive because all along the entire money value of all those certificates were lying in the post office account and the third respondent has not taken any steps to get the certificates encashed as and when they were matured by way of getting duplicate certificates. He would further submit that the learned Single Judge failed to consider that Section 84 enquiry was held in total violation of the principles of natural justice without giving reasonable opportunity to the appellant to explain his defence. Hence, the learned counsel for the appellant prays for allowing this appeal.

9. Per contra, Ms.T.Girija, learned Government Advocate appearing for the second respondent would submit that the learned Single Judge, on a thorough consideration of the materials and subsequent development in the case during the pendency of the Writ Petition, has partly allowed the writ petition and hence, prayed for dismissal of this writ appeal.

10. We have considered submissions of the learned counsel appearing for the appellant and the learned Government Advocate appearing for the second respondent and perused the materials placed before this Court.

11. The main contention of the learned counsel for the appellant is that since the Indhra Vikas Patras were very much available in the Society itself and the appellant was not allowed to enter into the Society and even otherwise, they would have got the duplicate certificate from the postal department and having not done so, the third respondent-Society should not blame the appellant and to pay the interest for loss caused to the Society. Initially, the appellant was appointed as a Clerk in the third respondent-Society. One Mr.R.Ponnusamy, who was then working as the Secretary of the third respondent-Society, was placed under suspension with effect from 30.11.1978. Against the said vacancy, the appellant was promoted and appointed as Secretary of the said Society. Subsequently, the suspension of Mr.R.Ponnusamy was revoked and consequently, the appellant was reverted back to the post of Clerk with effect from 07.06.1990. Thereafter, by letter dated 07.06.1990, the then Special Officer of the third respondent, directed the appellant to hand over charge to Mr.R.Ponnusamy. The said letter was received by the appellant on 23.06.1990. But he did not obey the same. According to the third respondent, he simply disappeared and so, the society could not function. Therefore, in order to carry on the day to day affairs of the Society, the then Special Officer had to break open the lockers etc., in the presence of the Officials as well as in the presence of the Police and during that break open the locker, Indhra Vikas Patras were found missing and therefore, a charge memo was issued to the appellant under Section 87 of the Tamil Nadu Co-operative Societies Act by the Deputy Registrar of Co-operative Societies.

12. The main ground of the appellant before the Tribunal as well as in the Writ Court that he was not given opportunity to defend himself in the domestic enquiry, but he has not stated anywhere that Indhra Vikas Patras were available in a particular place in the Society and it was break open in the presence of the Officials and it were not available and therefore, the charge memo was issued to the appellant. When the first opportunity was given to the appellant, he ought to have taken steps to enter into the Society and hand over the Indhra Vikas Patras, if at all is available in the Society as stated by the appellant, but he has not taken any steps and simply challenged the surcharge proceedings issued by the second respondent and also even when the matter was pending before the first respondent, he has also not taken any effective steps to enter into the Society and handover the Indhra Vikas Patras.

13. The further contention of the appellant is that in the year 2011, Indhra Vikas Patras were noticed and at that time the maturity time was already over and subsequently Indhra Vikas Patras were encashed and therefore, the appellant filed an additional affidavit before the Writ Court stating that since the Indhra Vikas Patras were available in the Society itself, he is not liable to pay the interest. The learned Single Judge has held that the third respondent-Society is also at fault for the loss caused for the period between the date of maturity of each Indhra Vikas Patras and the Bond till the date of encashment. Therefore, learned Single Judge reduced the interest payable by the appellant from 18% to 10%. Now, the contention of the learned counsel for the appellant is that the learned Single Judge having found that the third respondent is at default for the loss caused to the Society, ought not to have directed the appellant to pay interest at the rate of 10% for the delay in encashing those certificates.

14. Though the Indhra Vikas Patras were subsequently found in the Society and encashed, when the appellant was relieved from the Society asked to handover the charge and key and at that time the appellant has not handed over the charge and key and also not handed over the Indhra Vikas Patras and when subsequently it was broke open the locker, it was not found and it was informed by the learned counsel for the third respondent before the Writ Court that it were noticed in the year 2011. Hence, the contention raised by the appellant that he was not allowed to enter into the Society, is not acceptable for the reason that when he was given opportunity at the first instance to appear before the authority he did not appear. Further, he has not handed over the Indhra Vikas Patras and he has not specifically stated before the respondents by way of counter/reply that Indhra Vikas Patras were available in a particular place and therefore, in the absence of the same, we are of the considered view that there is no perversity in the order passed by the learned Single Judge and does not call for interference.

15. In view of the reasons assigned above, the Writ Appeal is liable to be dismissed and accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

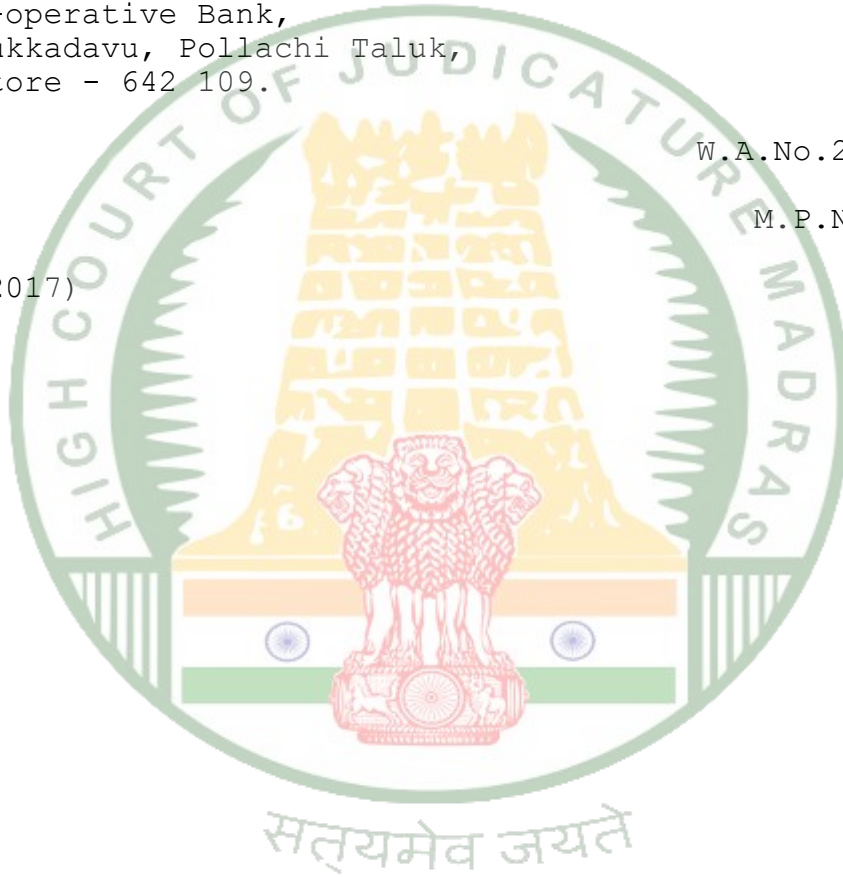
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