

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.674 of 2015 and
MP.No.1 of 2015

The General Manager,
Chennai Central Cooperative Bank Ltd,
215, Prakasam Salai,
Broadway,
Chennai-600 108.

..Petitioner

Vs.

1. M.K.Kothainayaki
2. K.Arun Sundar Yadav
3. K.Lokesh Krish Yadav
4. Deputy Registrar of
Cooperative Societies (Credit),
Chennai-600 108
5. Presiding Officer/Chief Judge,
Special Tribunal for Cooperative
Society cases/(Court of Small causes),
Chennai

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the fifth respondent Tribunal relating to its order CMA.No.1 of 2013 dated 01.08.2014 and quash the same.

For petitioner : Mr.P.Anbarasan
for M/s.Adithya Reddy

For Respondents : Mr.N.Poovanalingam for R1 to 3

: Mr.L.P.Shanmuga Sundaram,
Special Government Pleader for R4

: R5 - Tribunal

ORDER:

According to the petitioner, there had been misappropriation of funds in the Annasalai Branch of the Chennai Central Cooperative Bank Limited during the period from 10.06.2003 to 07.10.2006, when the husband of the first respondent was working as Assistant in that bank. Thereafter under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 an enquiry was conducted. At the time of enquiry, the husband of the first respondent Mr. Krishnamoorthy died. In this regard, criminal action and surcharge action were also taken. So action for recovery was taken only against the estate of the deceased employee. The first respondent appeared before the fourth respondent and gave her testimony. Only after hearing the first respondent, an award was passed against the first respondent. Challenging the said award, the first respondent filed an appeal in CMA.No.1 of 2013 before the Cooperative Tribunal / the fifth respondent. The appeal was allowed by holding that the father of the petitioners 1 to 3 therein died well before the enquiry. Therefore, the petitioners 1 to 3 had no knowledge about the Surcharge proceedings. And further held that the proceedings initiated against dead person was abated. Further, it was held that principles of natural justice has been violated by not furnishing the enquiry report. Hence, challenging the Judgment and Decree dated 01.08.2014 passed by the fifth respondent, the petitioner has filed the present writ petition before this Court.

2. The learned counsel for the petitioner would submit that the Appellate Tribunal has allowed the appeal without considering to remand the matter to the Deputy Registrar of Cooperative Societies namely, the fourth respondent to consider the matter afresh after furnishing a copy of the enquiry report. Therefore, the petitioner has filed the writ petition before this Court.

3. The learned counsel for the respondents 1 to 3 would submit that the said Krishnamoorthy died even before the enquiry was conducted, and thereafter, being legal heir of the said deceased Krishnamoorthy, the Surcharge order was passed against the first respondent. The Appellate Tribunal has rightly allowed the appeal by holding that the enquiry report has not been furnished to the respondents 1 to 3 and also the enquiry was conducted against the dead person. Therefore, the writ petition is liable to be dismissed.

4. Perusal of the records would show that the appeal has been allowed on two grounds. The first ground, no enquiry report has been furnished to the respondents 1 to 3, the other ground, enquiry was conducted against the dead person. Insofar as the first ground is concerned, it is settled principles of

law that in a case of similar issue, for non furnishing of the enquiry report, instead of setting aside the surcharge order, the respondent concerned ought to have been directed to furnish a copy of the enquiry report to the parties concerned and to proceed in accordance with law. Insofar as the other ground regarding conducting enquiry against a dead person, it is useful to extract the provisions under Section 87 (1) of the Tamil Nadu Cooperative Societies Act, 1983.

"87. Surcharge.-- (1) Where in the court of an audit under Section 80 or an enquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding-up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the rules or the by-laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just :

Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of any act or omission referred to this sub-section :

Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such

commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate."

5. In the light of the above said provisions, the proceedings can be initiated after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation.

6. Therefore, it is clear from the said provisions that the Surcharge proceedings can be initiated against the legal heirs of deceased person. Therefore, the reasons stated in the order passed by the Tribunal contrary to the above provision and the same is liable to be set aside.

7. In the result, the Judgment and Decree passed by the fifth respondent is set aside and the matter is remanded to the fourth respondent to consider the matter afresh and pass orders in accordance with law, after furnishing a copy of the enquiry report and other documents to the first respondent.

8. The writ petition is allowed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Deputy Registrar of
Cooperative Societies (Credit),
Chennai-600 108

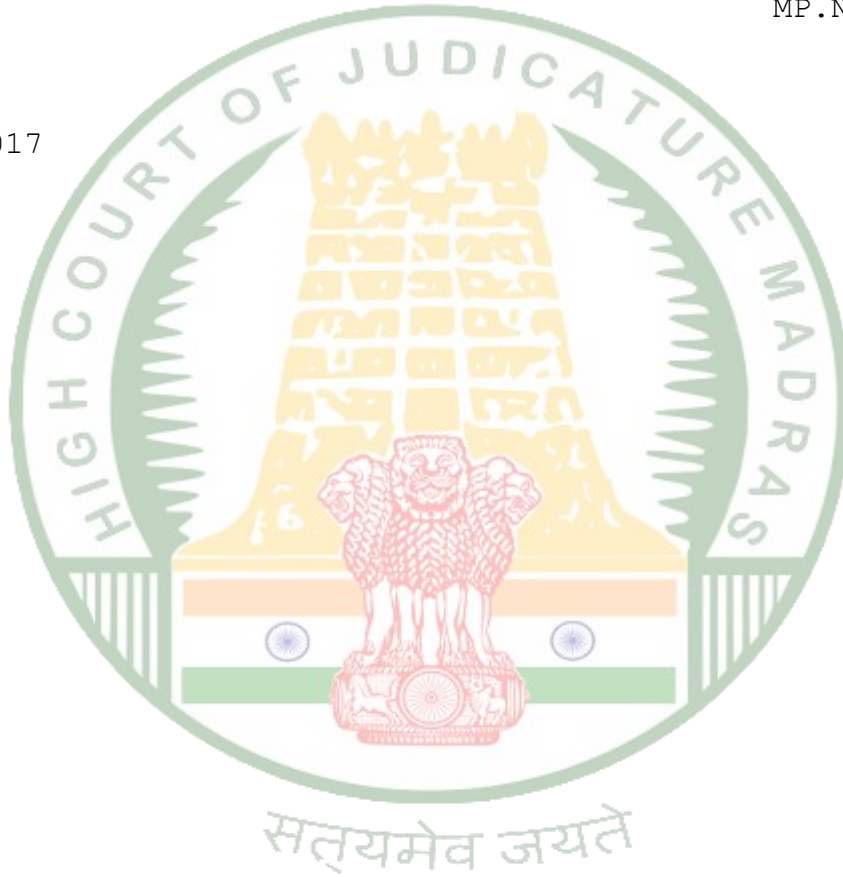
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2. Presiding Officer/Chief Judge,
Special Tribunal for Cooperative
Society cases/(Court of Small causes),
Chennai

+1 cc to Mr.P.Anbarasan Advocate sr 68591
+1 cc to Mr.N.Poovanalingam Advocate sr 68531
+1 cc to the Govt Pleader sr 69446

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