

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.6795 of 2016
and
W.M.P No.6060 of 2016

K2079, Mettupallayam Primary Agricultural
Co-operative Credit Society,
Annur Road, Mettupallayam,
Coimbatore District,
rep. by its Secretary. ... Petitioner

/Vs/

1. R.Krishnamoorthy
2. The Deputy Registrar of
Co-operative Societies,
Coimbatore Circle,
Coimbatore -18.
3. The Presiding Officer,
Principal District Court/
Co-Operative Tribunal,
Coimbatore District,
Coimbatore. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorified Mandamus, calling for the records of the third respondent pertaining to his proceedings in C.M.A.No.2 of 2011 and quash the portion of the order dated 09.09.2015 holding that there is no executable order against the first respondent and consequently permit the petitioner society to initiate appropriate proceedings to recover the remaining amount of Rs.14,58,000/- along with further interest and expenses incurred and pass such other orders.

For Petitioner	:	Mr. R.Sivakumar
For R1	:	Mr.J.Pothiraj for R1.
For R2	:	Mr.L.P.Shanmugasundaram, Special Government Pleader.
For R3	:	Tribunal.

O R D E R

This Writ Petition has been filed to quash the order dated 09.09.2015 passed by the third respondent Tribunal in C.M.A.No.2 of 2011, whereby, the Tribunal held that there is no executable order against the first respondent. Further direction is also sought for by the petitioner Society to permit them to initiate appropriate proceedings to recover the remaining amount of Rs.14,58,000/- along with further interest and expenses incurred.

2.The brief facts of the case are as follows:

During the year 1996 to 2001, the petitioner Society was administered by an elected Board of Directors and the first respondent was the president of the Petitioner Society. While so, Section 81 enquiry was initiated against the first respondent, alleging that there was misappropriation to the tune of Rs.19,63,313/-. Subsequently, it was recommended to recover the misappropriated amount from the President and other employees of the petitioner society, who were in-charge at that point of time. Thereafter, Section 87 surcharge proceedings was conducted by the second respondent i.e., Deputy Registrar of Co-operative Societies, Coimbatore and an award was passed against the first respondent and six others. Aggrieved by the order of the second respondent, the first respondent and others filed an appeal under section 152 of Tamil Nadu Co-operative Societies Act before the third respondent herein. The said appeal was allowed and the matter was remitted back to the second respondent for fresh trial. Pursuant to the same, the second respondent conducted surcharge proceedings and passed an order, dated 11.12.2009 for recovering a sum of Rs.9,49,914/- with interest at 21% from the first respondent and others, against which, the first respondent preferred an appeal in CMA.No.2 of 2011, which was allowed by the Appellate Tribunal. Hence, this writ petition has been filed by the petitioner Society, Challenging the order, passed by the Tribunal.

3. The learned counsel appearing for the petitioner Society would submit that the first respondent has admitted the charges framed against him and also paid a sum of Rs.7,00,000/-. However, without considering the same in proper perspective, the third respondent Tribunal has accepted the contentions of the first respondent and allowed the appeal, which is erroneous and unsustainable in law. The learned counsel would further submit that as the first respondent has admitted his charges and paid Rs.7,00,000/-, the petitioner Society is entitled to recover the balance misappropriated amount as fixed by the petitioner Society against the 1st respondent.

4. Per contra, the learned counsel appearing for the first respondent would submit that without any letter given by the petitioner Society, the first respondent, under the bonafide impression, has paid a sum of Rs.7,00,000/- as full and final settlement to the petitioner Society. The learned counsel would further submit that even as per the calculation made, the petitioner Society has imposed interest at 21% on the amount in question, which is exorbitant and against law.

5. Heard both sides and perused the materials available on record.

6. The Tribunal has accepted the contention of the first respondent stating that he paid a sum of Rs.7,00,000/- as full and final settlement and received the receipt for the said amount. Therefore, the court below has come to a conclusion that the recovery of amount has been made by the first respondent. Hence, there is no further adjudication.

7. In view of the amount settled, is disputed by the petitioner society and there is adjudication in the appeal. However, the amount settled in full and final settlement has to be gone into the merits of the appeal. Since, there is no discussion about the same in the appeal, this Court is inclined to set aside the order passed by the Tribunal and so, the matter is remanded to the third respondent Tribunal for fresh consideration.

i. In fine, the writ petition stands allowed, with a direction to the third respondent Tribunal to dispose of the Appeal in CMA. No.2 of 2011 afresh as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

ii. Both parties are directed to cooperate for the speedy disposal of the above CMA.

Sd/-

सत्यमेव जयते Assistant Registrar

//True copy//

Sub Assistant Registrar

rkp

To

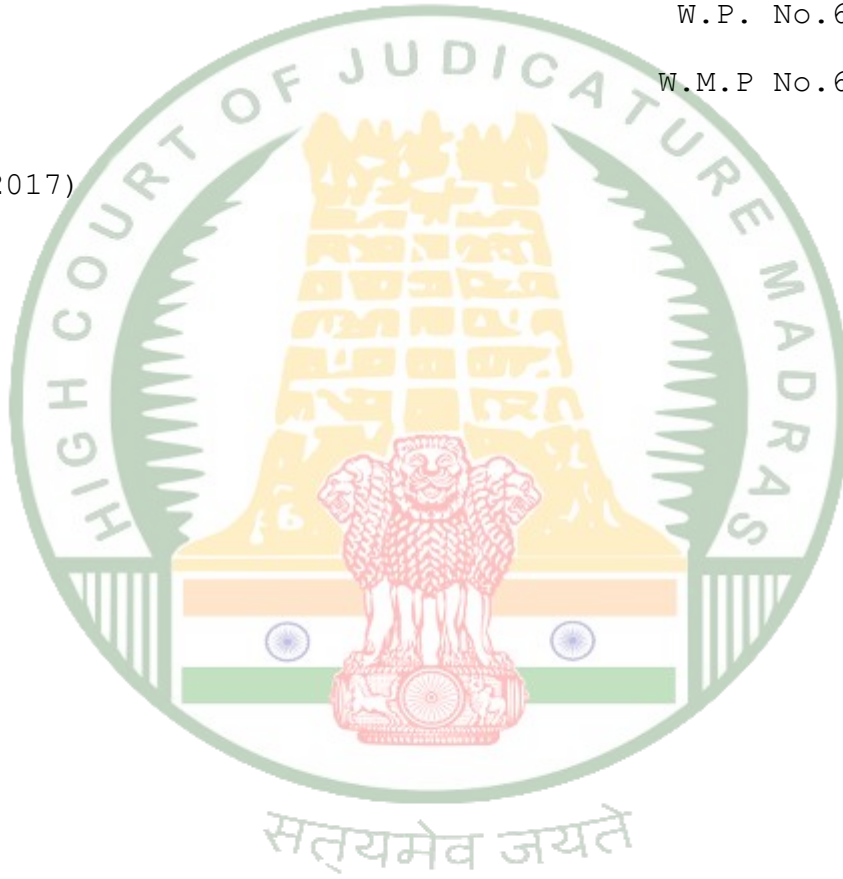
1. The Deputy Registrar of
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2. The Presiding Officer,
Principal District Court/
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Coimbatore District,
Coimbatore.

+1cc to Mr.J.Pothiraj, Advocate SR.No.68803
+1cc to Mr.R.Sivakumar, Advocate SR.No.69575
+1cc to Government Pleader SR.No.70113

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and
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VGII(CO)
GN(27/12/2017)



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