

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.33978 of 2003

K863, Elumathur Primary Agricultural
Co-operative Bank,
Rep. By its Special Officer,
Tmt.Arulmozhi, Erode Region,
Erode District.

... Petitioner

/Vs/

1. R.Athiseshan

2. The Deputy Registrar of
Co-operative Societies,
Erode,
Erode District.

3. The Principal District Judge,
Erode, Erode District.

.... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the Principal District Judge, Erode in C.M.A.No.68/99, dated 06.09.2001 and to quash the same and pass such further or other orders.

For Petitioner : Mr. S.T.S.Moorthy, Senior Counsel
Asst. by for Mr. R. Santhanam.

For Respondents : Mr.R. Krishnamoorthy for R1.

Mrs. T.Girija,
Government Advocate for R2.

R3 - Court

O R D E R

This Writ Petition has been filed challenging the judgment dated 06.09.2001 passed by the Principal District Judge, Erode in C.M.A.No.68/99.

2. According to the learned counsel for the petitioner would submit that, it is the case of the petitioner that an enquiry under section 81 of the Tamil Nadu Co-operative Societies Act, 1983, was initiated against the first respondent on the allegation that he was misappropriated a sum of Rs.3,03,987.91 during the period, he was working as a Secretary of the petitioner Bank. Following the same, surcharge award was passed against the first respondent to recover the alleged payment due from him. Challenging the said award, the first respondent preferred an appeal before the third respondent. By the impugned judgment, the third respondent allowed the appeal and set aside the order passed by the second respondent in Na.Ka.No.15040/94-N in Suit No.3919/94-95 dated 11.08.1999 and remitted the matter to the authority concerned for fresh disposal, on the ground that the first respondent was not given relevant documents during the surcharge proceedings. Aggrieved over the same, the petitioner Bank has come up with the present writ petition for the above stated relief.

3. Learned counsel for the petitioner would further submit that all the relevant documents were furnished and sufficient opportunity was provided to the first respondent to put forth his contention during the surcharge proceedings, whereas, he failed to avail those opportunity and did not come forward to cross examine the witness adduced by the petitioner Bank. As such, the impugned judgment passed by the third respondent is arbitrary, erroneous, unsustainable in law.

4. Learned counsel for the first respondent would submit that considering the facts and circumstances of the case, the third respondent has passed the impugned judgment, which warrants no interference by this Court.

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

6. According to the learned counsel for the petitioner, all the necessary documents have been furnished to the first respondent, which aspect has also been taken into consideration by the third respondent, while passing the impugned judgment. However, learned counsel, on instructions, submitted that the petitioner would be satisfied, if an opportunity is provided to them, to prove that all the documents were already furnished to the first respondent at the surcharge proceedings.

7. In the light of the submission made by the learned counsel for the petitioner, this Court is inclined to grant an opportunity to the petitioner to prove that all the relevant documents have already been furnished to the first respondent, by producing the necessary records.

8. Accordingly, the writ petition is allowed and the impugned judgment is set aside. The matter is remitted to the third respondent for fresh disposal. The petitioner is directed to produce the necessary records to the third respondent to prove that all the relevant documents were already furnished to the first respondent. On production of such records, if the third respondent being satisfied with the same, shall consider the appeal in CMA.No.68 of 1999 afresh and dispose of the same, on merits and in accordance with law, after providing an opportunity of personal hearing to the parties, within a period of six months from the date of receipt of a copy of this order. Both the parties shall co-operate with the third respondent for early disposal of the appeal. Till such time, status quo shall be maintained by the parties. No costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

rkp
To

1. The Deputy Registrar of
Co-operative Societies,
Erode,
Erode District.
2. The Principal District Judge,
Erode, Erode District.

+1cc to Mr.K.PREM KUMAR. Advocate, S.R.No.69135/17
+1cc to the Government Pleader, S.R.No. 70111/17

W.P. No.33978 of 2003

DK (CO)
TR(22/12/2017)

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