

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 05.06.2017**

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.04.2017	05.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.A. (MD) No.1309 of 2016
and
C.M.P. (MD) No.9217 of 2016

The President
NN.536, Thiruppakkottai
Primary Agricultural Co-operative
Credit Society
No.48, Maanthopu Street (Extn)
Devakottai-630 302,
Sivagangai District.

... Appellant/ 4th Respondent

-vs-

1. S.Poornam
2. The Joint Registrar
Co-operative Societies
Sivagangai Region
3. The Deputy Registrar
Co-operative Societies
Karaikudi, Sivagangai District
4. The Sub-Registrar / Field Officer
Co-operative Society, Karaikudi ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.06.2016, made in W.P.(MD) No.17685 of 2014, on the file of this Court.

Prayer in WP(MD). 17685/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records related to the 3rd respondents summon dated 17.1.2014 the consequential proceedings of the 2nd respondent vide Na.Ka.No.440/2014 Sa.Pa. dated 27.3.2014 in so far as the enquiry is concerned and consequential order passed by the 4th respondent dated 8.5.2014 and to quash the same and direct the respondents herein to disburse all the terminal benefits due to the petitioner with 12% interest from the death of the petitioner's husband.

For Appellant : Mr.D.Sadiq Raja

For Respondents : Mrs.M.Muthulakshmi for R1
Mr.S.Chandrasekar
Govt. Advocate for R2 to R4

J U D G M E N T

T.S.SIVAGNANAM, J.,

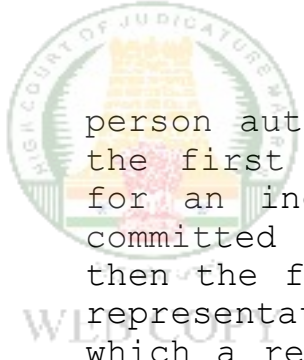
The appellant is a Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter, referred to as "the Act") and they are aggrieved by the order, dated 09.06.2016, made in W.P.(MD) No.17685 of 2014.

2. The writ petition, in W.P.(MD) No.17685 of 2014, was filed by the first respondent herein to quash the summons issued by the fourth respondent, dated 17.01.2014, under Section 81 of the Act and the proceedings of the third respondent, dated 27.03.2014.

3. The first respondent's husband Thiru.K.Subramanian was functioning as the Secretary of the appellant - Society and he died in harness on 02.08.2013. Alleging that, during his lifetime, he had misappropriated funds of the Society, which were allocated for drought relief, an inquiry was ordered under Section 81 of the Act. By virtue of the power conferred under Section 81 of the Act, the Registrar may, either *suo motu* or on application of a majority of the Board or on the request of the Financing Bank or of the District Collector, hold an inquiry or direct some persons authorised by him to hold an inquiry into the constitution, working and financial conditions of a registered Society on any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that Society or into any particular aspect of the working of that Society.

<https://hcservices.ecourts.gov.in/hcservices/>

4. As Section 81 of the Act empowers the Registrar or the



person authorised by him to hold inquiry, a notice was issued to the first respondent, on 17.01.2014, calling upon her to appear for an inquiry in connection with the alleged misappropriation committed in the disbursement of drought relief funds. Since by then the first respondent's husband had passed away, she had made representations for disbursal of the amounts payable to him, for which a reply was sent by the third respondent, dated 27.03.2014, intimating the first respondent that in the inquiry report submitted under Section 81 of the Act, it is stated that the first respondent's husband has misappropriated a sum of Rs.2,75,297/- and after perusal of the report, the appellant - Society would take a decision regarding disbursal of the dues payable to her late husband. The first respondent challenged the summons issued by the fourth respondent, dated 17.01.2014, and the intimation sent by the third respondent, dated 27.03.2014.

5. The sum and substance of the contentions raised by the first respondent is that her husband passed away on 02.08.2013 and the summons was issued on 17.01.2014, calling upon her to attend the inquiry initiated, under Section 81 of the Act and such initiation itself is without jurisdiction as the proceedings having been initiated after the demise of the employee stands abated. There were other subsidiary points raised by the first respondent, which may not be very relevant in this appeal.

6. The appellant - Society raised a preliminary objection regarding the maintainability of the writ petition, firstly, on the ground that the report submitted by the Inquiry Officer, under Section 81 of the Act, which ultimately culminated in an order passed under Section 87 of the Act, dated 24.03.2015 has not been challenged by the first respondent and the prayer sought for by her is not maintainable. It was further submitted that if the first respondent was aggrieved by the order passed under Section 87 of the Act, she should have filed a revision petition under Section 157 of the Act or raised a dispute under Section 90 of the Act and the first respondent cannot straightaway approach this Court invoking Article 226 of the Constitution of India.

7. With regard to the power of the Society to proceed against the first respondent for recovery of the misappropriated amount from and out of the estate of the deceased, it is submitted that Section 87(1) of the Act empowers recovery to be effected in case of a deceased person from the representative, who inherits his estate and Rule 118 of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter, referred to as "the Rules") provides the procedure to be followed where the judgment-debtor dies before full satisfaction of decree and these provisions clearly show that the action initiated by the appellant - Society is well within the jurisdiction of the authorities in terms of the provisions of the Act and the Rules.



8. The learned counsel appearing for the appellant reiterated the averments set out in the counter affidavit filed in the writ petition and the statutory provisions to show that the writ petition ought not to have been entertained.

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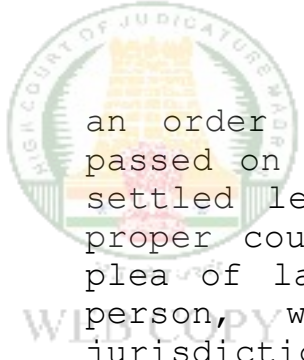
9. The learned counsel appearing for the first respondent / writ petitioner raised a preliminary objection stating that the counter affidavit filed by the appellant - Society in the writ petition sworn to Mr.S.Ganesan, it's President, is different from the counter affidavit, which was served on her before the writ petition was taken up for disposal and the counter affidavit placed in the typed set of papers in this appeal is materially different from the counter affidavit given to her. To sort out this controversy, this Court issued a direction to the appellant - Society on 21.04.2017. Accordingly, an affidavit was filed by the President of the appellant - Society as to what transpired and why the counter affidavits are different.

10. It appears that the appellant - Society had prepared the counter affidavit not only for itself, but also a draft counter affidavit for the Deputy Registrar of Co-operative Societies / second respondent in the writ petition. The counter affidavit filed on behalf of the appellant - Society was misplaced and it is stated that the draft counter affidavit prepared for the Deputy Registrar was available in the computer, printout of which was taken and filed in the typed set of papers. It is not clear as to whether the Deputy Registrar had filed a counter affidavit in the writ petition.

11. Be that as it may, this Court is convinced that there is no foul play by the appellant - Society nor they were put to advantage on account of this mix-up. Therefore, we propose to leave the issue at this stage and not to dwell upon it any further particularly when we propose to consider the preliminary objection raised by the appellant - Society with regard to the maintainability of the writ petition.

12. Heard Mr.D.Sadiq Raja, learned counsel appearing for the appellant, Mrs.M.Muthulakshmi, learned counsel appearing for the first respondent and Mr.S.Chandrasekar, learned Government Advocate appearing for the respondents 2 to 4 and carefully perused the materials produced.

13. The facts are not in dispute. The first respondent's husband died, on 02.08.2013, well before the date on which summons was issued to the first respondent to appear for inquiry under Section 81 of the Act. The summons has been challenged in the writ petition. However, even before the writ petition was filed,



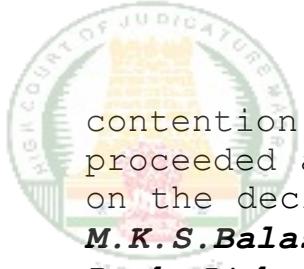
an order of surcharge, under Section 87 of the Act, had been passed on 24.03.2015. This order remains unchallenged. It is a settled legal principle that summons cannot be quashed and the proper course would be to respond to a summons and in case the plea of lack of jurisdiction is raised, it is well open to the person, who has been summoned to raise the question of jurisdiction before the very same authority, who issued the summons.

14. The first respondent would state that on advice from certain persons, she did not attend the hearing pursuant to the said summons. Thus, when the order of surcharge, dated 24.03.2015, remains unchallenged, the Writ Court could not have examined the correctness of the action of the authorities in initiating recovery proceedings from the dues payable to the husband of the first respondent. In other words, the summons had worked itself out, thereafter a report, under Section 81 of the Act has been submitted, which report was considered by the Board of the appellant - Society and decision was taken, surcharge proceedings were initiated, notice was issued, the first respondent failed to appear before the authority and the authority, namely, the third respondent has passed the order, dated 24.03.2015, under Section 87 of the Act.

15. As against the said order, the proper remedy for the petitioner is to raise the dispute under Section 90 of the Act or to invoke the revisional powers of the Registrar under Section 157 of the Act. The first respondent did neither, but questioned only the summons and a communication sent by the appellant that they are in the process of considering the Inquiry Report submitted under Section 81 of the Act, which stated that the first respondent's husband had misappropriated a sum of Rs.2,75,297/-. Thus, even as on the said date when the first respondent received the communication, dated 27.03.2014, which is also one of the orders impugned in the writ petition, she was aware that a report adverse to her interest has been submitted under Section 81 of the Act, which may result in recovery of the amount payable to her late husband. Thus, unless and until the first respondent challenges the order passed under Section 87 of the Act, she cannot seek for any consequential order for the release of the entire retirement benefits payable to her husband without any deduction.

16. As we are convinced that the writ petition is not maintainable for the prayer as sought for and the correctness of an order passed under Section 87 of the Act cannot be tested in a writ petition, we have to necessarily dismiss the writ petition as not maintainable and set aside the directions issued.

17. The learned counsel for the appellant, in support of his



contention that proceedings will not get abated and can be proceeded against the legal heirs of the deceased employee, relied on the decision of the Division Bench of this Court in the case of **M.K.S.Balasubramanian v. The Kancheepuram Central Co-operative Bank Ltd.**, reported in **2010 (2) CTC 569** and with regard to the maintainability of the writ petition, the decision of the Division Bench in the case of **A.Balaraman & Ors. v. The Deputy Registrar of Co-op. Societies**, reported **2009 (1) C.L.T. 167**.

18. As indicated above, we do not propose to go into the correctness of the recovery effected from the dues payable to the deceased employee as we have held that the prayer sought for in the writ petition is not maintainable and the consequential relief granted by the Writ Court could not have been granted, since the first respondent has not challenged the order passed under Section 87 of the Act, dated 24.03.2015. Hence, we are inclined to leave the legal issues open to be adjudicated by the appropriate forum. Since we have come to the conclusion that the prayer sought for in the writ petition was not maintainable, we do not wish to fore-close the rights and remedies that would be available to the first respondent and therefore, we propose to grant liberty to the first respondent to raise a dispute under Section 90 of the Act before the competent authority.

19. In the light of the above, the writ appeal is allowed and the order, dated 09.06.2016, made in W.P.(MD) No.17685 of 2014, is set aside and consequently, W.P.(MD) No.17685 of 2014 is hereby dismissed as not maintainable. However, liberty is granted to the first respondent to raise a dispute before the competent authority under Section 90 of the Act and if such dispute is raised within a period of thirty days from the date of receipt of a copy of this order, the said authority shall entertain the dispute without reference to the limitation. This indulgence is granted taking note of the fact that the writ petition was pending since 2014 onwards. We make it clear that the legal issues, which were raised by both the parties are left open to be considered by the competent authority while adjudicating the dispute to be raised by the first respondent.

20. At the time, when this appeal was entertained, an order of interim stay was granted on 28.09.2016, subject to the condition that the appellant - Society deposits a sum of Rs.1,83,274/- to the credit of this appeal in Indian Bank, Madurai Bench Branch. This conditional order has been complied with and the amount has been deposited by the appellant - Society. In the light of the same, the first respondent is permitted to withdraw the entire amount lying with the Indian Bank, Madurai Bench Branch, together with accrued interest and such withdrawal will be without prejudice to her rights and contentions in the dispute to be raised by her before the competent authority in terms of the



liberty granted by us in the preceding paragraph. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

To:

1.The Joint Registrar,
Co-operative Societies,
Sivagangai Region.

2.The Deputy Registrar,
Co-operative Societies,
Karaikudi,
Sivagangai District.

3.The Sub-Registrar / Field Officer,
Co-operative Society, Karaikudi.

+1 cc to Mr.M.Muthulakshmi , Advocate in SR.No. 58415

+1 cc to Special Government Pleader in SR.No.58544

krk

AE/SV/SAR4/20.06.2017/7P/6C

W.A. (MD) No.1309 of 2016

and

C.M.P. (MD) No.9217 of 2016

05.06.2017