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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.49 of 2015
and
M.P.No.1 of 2015

Vellore District Central Cooperative Bank,
rep. by its Special Officer, Vellore.

... Appellant/3rd Respondent

versus

1. M.Gurunathan
2. The Speical Tribunal for
Cooperative Cases, Vellore.
3. The Deputy Registrar of
Cooperative Societies, Vellore.

... Respondents/Respondents

Appeal filed against the order passed by this Court dated
20.07.2007 made in W.P.No.7326 of 2003.

W.P.No.7326 of 2003:-

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari or any other appropriate Writ order or direction of like nature calling for records on the file of the respondents relating to the order bearing C.T.A.No.10 of 1995 dated 26/09/2002 of the first respondent and quash the same.

For Appellant : Mrs.G.Thilakavathy, Senior Counsel
for Mr.R.Gopinath

For Respondents : Mr.R.Arumugam for R1
Mr.L.P.Shanmugasundaram
Special Public Prosecutor
(Co-operative)
for R2 and R3.



J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN, J.)

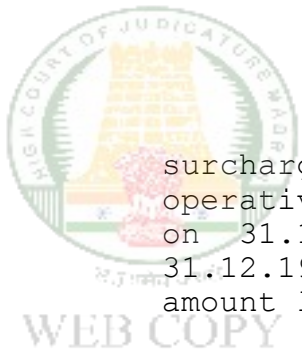
WEB COPY The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 20.07.2007 made in W.P.No.7326 of 2003, in and by which, the Writ Petition filed by the 1st respondent was allowed quashing the order of the Co-operative Tribunal, which in turn confirmed the order of the 2nd respondent made in surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

The chronology of events that led to the filing of the Writ Petition are as follows:-

2. The 1st respondent was working as an Assistant Manager of the Vellore Bazar Branch of the 3rd respondent. One M.Munusamy was the Project Manager and one R.Jothiramalingam was the Cashier. The Vellore Bazar Branch of the 3rd respondent Bank had continuous working hours from 8.00 a.m to 8.00 p.m and the Officers on duty work on shift basis. According to the 1st respondent, the Manager and the Cashier are the Joint Custodians of cash, cash safe, cash chest and cash room which were secured by double lock system and the keys were with the Cashier and the Manager. As an Assistant Manager, the 1st respondent's responsibilities are only to see the day to day transactions like passing of cheques, account maintenance, credit works etc.,

3. The 1st respondent would further claim that he worked on the 2nd shift on 20.05.1989 between 12.00 noon and 4.00 p.m. The Branch Manager verified the cash and signed in the coin war Register. It is the further contention that the Branch Manager signed in the coin war Register only after fully satisfying himself with the cash amalgamation. The coin war Register was signed by the Manager and the Cashier and the Branch Manager kept the cash inside the cash chest in cash room and locked it. However, when the Branch was opened on 22.05.1989 since 21.05.1989 happened to be Sunday, it was found that the cash safe of the 2nd shift was open but no complaint was made immediately. When the 2nd shift employees came to the Bank, the complaint was made and after verification it was found that there was shortage of a sum of Rs.4,35,000/- and the same was missing from the Cash safe.

4. Immediately the proceedings were launched under Section 81 of the Tamil Nadu Co-operative Societies Act and criminal proceedings were also initiated against the Manager Munusamy, Assistant Manager Gurunathan (Appellant herein) and Jothiramalingam, the Cashier. The criminal proceedings however ended in an acquittal. The 3rd respondent Bank initiated



surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act against the three delinquent officials on 31.12.1993. The surcharge proceedings were completed on 31.12.1994 and orders were passed directing recovery of the amount lost by the Bank from all the three individuals.

5. The three delinquent officials filed appeals in CTA Nos.10 of 1995, 12 of 1995 and 18 of 2002 on the file of the Special Tribunal for Co-operative cases, Vellore District. The appeal filed by the 1st respondent was numbered as CTA.No. 10 of 1995 and the other two appeals were numbered as CTA.Nos.12 of 1995 and 18 of 2002. The appellate Tribunal by its order dated 26.09.2002 dismissed the appeals. Aggrieved, the petitioner had come forward with the Writ Petition in W.P.No.7326 of 2003 before this Court, which came to be allowed by the order impugned in this appeal on 20.07.2007. It should be pointed out at this juncture that the Writ Petition was allowed solely on the ground that the surcharge proceedings were not completed within a period of six months from the date of their initiation.

6. In the course of the hearing of this appeal the learned counsel appearing for the 1st respondent brought to our notice that the common order passed by the Special Tribunal for Co-operative cases, Vellore in CTA.Nos.10, 12 of 1995 and 18 of 2002 dated 26.09.2002 was challenged by the other two officials viz., the Cashier and the Manager in W.P.Nos.43858 of 2002 and 8137 of 2004. Those Writ Petitions came to be disposed of by this Court on 08.09.2009 while setting aside the order of the Special Tribunal for Co-operative Cases, Vellore, this Court had remitted the appeals to the Special Tribunal to be heard afresh. Pursuant to the said order of remand, the Special Tribunal for Co-operative cases, Vellore had by its order dated 30.03.2010 allowed the appeals setting aside the award passed in the surcharge proceedings. It is also brought to our notice that the said judgment of the Special Tribunal for Co-operative appeals dated 30th March 2010 made in CTA.Nos.12 of 1995, 18 of 2002 has been challenged by the appellant Bank in W.P.No.6648 of 2011.

7. Pointing out the above subsequent developments Mr.R.Arumugam, learned counsel appearing for the 1st respondent would contend that inasmuch as the very award of the 2nd respondent made in the surcharge proceedings has been set aside by the Special Tribunal for Co-operative Cases in the appeals filed by the other two delinquent officials viz., the Manager and the Cashier nothing survives in this intra-Court appeal for adjudication.

8. Per contra Mrs.G.Thilagavathy, learned Senior Counsel appearing for the appellant Bank would submit that the Writ Petitions filed by the appellant Bank challenging the order of



the Special Tribunal for Co-operative cases dated 30th March 2010 made in CTA.Nos.12 of 1995 and 18 of 2002 are pending and hence, the claim of the 1st respondent that nothing survives for adjudication in this intra-Court appeal is not correct.

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9. We have considered the rival submissions. The fact remains that the learned Single Judge in the order impugned in this Writ Appeal has not gone into the merits of the case and has chosen to allow the Writ Petition on the ground of the limitation alone. Apart from a passing remark that the petitioner in the Writ Petition could not have been held responsible for the loss of cash on the fateful day. In any event, the order surcharging the other two officials has been set aside and the Writ Petition filed by the Bank challenging the said order is pending. The 1st respondent is also a party to the said Writ Petition in W.P.No.6648 of 2011.

10. We are therefore of the considered opinion that it will be in the interest of justice if the Writ Petition filed by the 1st respondent in W.P.No.7326 of 2003 is also heard along with the Writ Petition filed by the Bank in W.P.No.6648 of 2011 as the same would facilitate a comprehensive disposal of the entire issue. We cannot desist from expressing our dis-satisfaction over the manner in which the entire process has been handled by the 3rd respondent Bank and its counsel at various stages. The fact that the Writ Petition filed by the 1st respondent was allowed by this Court even on 20.07.2007 was not brought to the notice of the learned Single Judge who disposed of the Writ Petitions filed by the other two delinquent officials on 08.09.2009, though, the very same learned counsel appeared for the Bank in both the cases. The fact that the appeals viz., CTA.Nos.10 of 1995 and 18 of 2002 were allowed by the Co-operative Tribunal by its order dated 30th March 2010 and the Bank had filed a Writ Petition challenging the same were not brought to our notice by the learned counsel appearing for the Bank. This failure on the part of the learned counsels and the Bank had led to conflicting orders being passed on the same set of facts. We sincerely hope that the 3rd responded Bank and its counsels will do their best to avoid such situations in future.

11. Mr.R.Arumugam, learned counsel appearing for the 1st respondent would contend that he has not been paid the gratuity and the appellate authority under the payment of gratuity Act has directed payment of gratuity to the appellant by its order dated 25.05.2018. We make it clear that the pendency of these proceedings will not be a bar to the 1st respondent from claiming gratuity that is payable to him under law.

12. In view of the foregoing reasons, this intra-Court appeal is allowed. The order of the learned Single Judge is set



aside and the Writ Petition in W.P.No.7326 of 2003 is remitted to the Writ Court for being heard along with W.P.No.6648 of 2011 and disposed of in accordance with law. Since the proceedings relate to the year 1991, 1992 we would only request the learned Single Judge to hear the Writ Petitions as expeditiously as possible. However, in the circumstances of the case we make no order as to costs. We also make it clear that we have not expressed any opinion on the merits of the matter and the order of remand has been made only to facilitate the joint hearing of all the Writ Petitions so as to avoid a conflict of decisions with reference to the same matter. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Special Tribunal for
Cooperative Cases, Vellore.
2. The Deputy Registrar of
Cooperative Societies, Vellore.

+1cc to the Government Pleader, S.R.No.38712

W.A.No.49 of 2015

SKS(CO)
CS/10/07/18