

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM:

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

W.A.No.732 of 2018

K.Damodaran ... Appellant/Petitioner

versus

1. The Deputy Registrar of Co-operative Societies  
Tiruvallur Circle,  
No.6, Lalbhagadursasthri Street,  
Periakuppam, Tiruvallur - 602 007.
  2. No.KP (Spl). 180, HVF Employees Co-operative  
Thrift and Credit Society Ltd,  
Rep. By its Special Officer,  
MB-26-A, HVF Estate,  
Avadi, Chennai 600 054.
  3. The Enquiry Officer (U/s.81)  
O/o the Deputy Registrar of Co-operative Societies,  
Tiruvallur Circle,  
No.6, Lalbhagadursasthri Street,  
Peiakuppam, Tiruvallur 602 007.
- ... Respondents/Respondents

Appeal filed against the order passed by this Court dated 30.08.2017 passed in W.P.No.15179 of 2011.

Prayer in WP.No.15179/2011: To call for the records in pursuant to the order dated 8.2.2011 made in Co-OP.CMA.No.4/2008 on the file of Co-OP. Tribunal/Principal District Court, Thiruvallur.

For appellant : Ms.Swadhi Subramanian  
for Mr.R.Prem Narayan

For Respondents: Mr.T.Girija, Government Advocate

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 30.08.2017 made in WP No.15179 of

2011, in and by which, the Writ Petition filed by the appellant, challenging the order of the Cooperative Tribunal in CMA No.4 of 2008 came to be dismissed.

2. The brief facts that led to the filing of the Writ Petition are as follows:

The appellant who was working as a clerk was made Secretary incharge of the 2<sup>nd</sup> respondent Society between the period from 01.04.2004 to 12.08.2005. During the said period, an enquiry was undertaken regarding the conduct of the appellant, in not remitting the interest due to the District Central Cooperative Bank. Since it was found that the 2<sup>nd</sup> respondent society was forced to pay a sum of Rs.3,56,719/- towards penal interest to the District Central Cooperative Bank, because of the non remittance of interest payable in time proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, were initiated against the appellant.

3. The 1<sup>st</sup> respondent by its order dated 08.02.2008 concluded that there was short remittance of the interest payable to the District Central Cooperative Bank between September 2004 and October 2005, which had resulted in penal interest being levied by the District Central Cooperative Bank. The first respondent concluded that the non remittance of the entire interest was due to the wilful negligence of the appellant and after rejecting the explanation of the appellant, the 1<sup>st</sup> respondent directed recovery of a sum of Rs.3,56,719/- with subsequent interest by its order dated 08.02.2008.

4. Aggrieved the appellant preferred an appeal before the Cooperative Tribunal, viz. the Principal District Judge, Thiruvallur in CMA No.4 of 2008. The said CMA came to be dismissed on 08.02.2011. The appellant challenged the said order made in CMA No.4 of 2008, before this Court, by way of WP No.15719 of 2011.

5. The primary contention of the appellant in the Writ Petition was that the interest payable to the District Central Cooperative Bank could not be paid in as much as the amount was utilized for disbursing loans to the members at the insistence of the members of the society. It was also contended that there was no wilful negligence on the part of the appellant in not paying the interest payable to the District Cooperative Bank in time.

6. The learned Single Judge, who heard the Writ Petition, rejected the contention of the appellant and concluded that the action of the appellant in not remitting the interest payable had caused loss to the society and hence the appellant is liable to be proceeded with under Section 87 of the Tamil Nadu Cooperative Societies Act.

7. Aggrieved the appellant has come forward with the above intra Court Appeal.

8. We have heard Ms.Swathi Subramanian, learned counsel appearing for Mr.R.Prem Narayanan for the appellant and Mrs.Girija, Government Advocate appearing for the respondents.

9. Mrs.Swathi Subramanian, learned counsel appearing for the appellant would strenuously contend that neither the Original Authority nor the Appellate Authority had concluded that there was wilful negligence on the part of the appellant, which resulted in financial loss to the society. The fact remains that the appellant had admitted short remittances of the interest payable to the District Central Cooperative Bank, at the same time the appellant had explained the circumstances that led to such short remittances. The learned counsel for the appellant would further contend that the learned Single Judge after having referred to the judgment of this Court in S.Ramadevi v. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016 (4) LW 452, had not followed the said judgment in its letter and spirit.

10. Arguing further, the learned counsel for the appellant would submit that the requirement of wilful negligence on the part of the employee concerned is mandatory to enable the society to precede Under Section 87 against the employee. Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, enables surcharge proceedings against the employee if it is shown that the employee has misappropriated or fraudulently retained any money or other property or has 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 Bylaws.

11. It is not the case of the respondents that the appellant had misappropriated or has retained any money or property belonging to the Society. The only charge against the appellant is that because of his conduct in short remitting the dues

payable to the District Central Cooperative Bank, the society had incurred an additional liability of penal interest to the tune of Rs.3,56,719/-. Therefore, unless it is shown that the said conduct would amount to wilful negligence on the part of the appellant, he cannot be made liable to make good the loss under Section 87 of the Cooperative Societies Act. This court had considered the meaning of the term "wilful negligence" in Ramadevi's case, cited supra, wherein the judgment of this Court in K.Ajay Kumar Gosh and others v. Tribunal for Cooperative, reported in 2009 (4) MLJ 992 was quoted with approval.

12. In Ajay Kumar Gosh's case, this court had held that the word wilfulness or wantonness imports premeditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequence which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless disregard of probable consequences, a wilful wrong. In order to constitute wilful negligence the act or the omission must involve reckless disregard of duty and the right as to imply bad faith.

13. By admitting the fact that he had not remitted the actual amounts due to the District Central Cooperative Bank on time, the appellant can at best be stated to have been negligent in discharge of his duties, but it remains to be seen whether the Authorities have made out a case for construing such negligence as wilful negligence. We have examined the orders of the 1<sup>st</sup> respondent as well as the Cooperative Tribunal, neither the 1<sup>st</sup> respondent nor the Cooperative Tribunal had concluded that the appellant had short remitted the interest payable to the District Central Cooperative Bank with the knowledge that the same would attract penal interest and the consequential loss to the Bank.

14. We are constrained to observe that the element of wilfulness in the action of the appellant has not been established. As already stated unless the wilfulness is established an order of surcharge under Section 87 cannot be sustained. The learned Single Judge though had referred to the judgment in Ajay Kumar Gosh's case, referred to supra, has not concluded that the omission on the part of the appellant would amount to wilful negligence. We do not find that the omission on the part of the appellant is deliberate and stems out of recklessness or carelessness, hence we are constrained to interfere with the conclusions of the learned Single Judge inasmuch as the learned Single Judge had not rendered a finding

that the omission on the part of the appellant would amount to wilful negligence as pointed out in Ajay Kumar Gosh's case, cited supra.

14. We therefore allow this Appeal, setting aside the judgment of the learned Single Judge. The Writ Petition in WP No.15179 of 2011 will stand allowed and the orders of the Cooperative Tribunal in CMA No.4 of 2008 will stand quashed. The order of the Original Authority viz. the 1<sup>st</sup> respondent surcharging the appellant dated 08.02.2008 will stand set aside.

However in the circumstances, there will be no order as to costs.

Sd/--

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Deputy Registrar of Co-operative Societies  
Tiruvallur Circle,  
No.6, Lalbhagadursasthri Street,  
Periakuppam, Tiruvallur - 602 007.
2. The Special Officer,  
No.KP (Spl). 180, HVF Employees Co-operative  
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O/o the Deputy Registrar of Co-operative Societies,  
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No.6, Lalbhagadursasthri Street,  
Peiakuppam, Tiruvallur 602 007.

+1cc to Mr.R.Prem Narayan, Advocate Sr.No.38416

+1cc to Government Pleader Sr.No.38694

+1cc to Ms.T.Girija, Advocate Sr.No.38506

VGI(CO)

sm:9.7.2018

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