



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD) No.657 of 2018

and

C.M.P.(MD) No.3624 of 2018

The Deputy Registrar of
Co-operative Societies
Dindigul

... Appellant / Petitioner

-vs-

1.The Tribunal for Cooperative Societies

Cum the Principal District Court

Dindigul

... 1st Respondent / 1st Respondent

2.C.Ashokan

... 2nd Respondent / 2nd Respondent

Writ Appeal filed under Clause XV of Letters Patent to set aside the order, dated 06.02.2017, made in W.P.(MD) No.6868 of 2009, on the file of this Court.

Prayer in WP(MD). 6868/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records and direct to quash the order of the 1st respondent dated 04/02/2009 in C.M.A(CS) NO. 56 of 2000.

For Appellant : Mr.V.O.S.Kalaiselvam

For Respondents : R1 - Tribunal

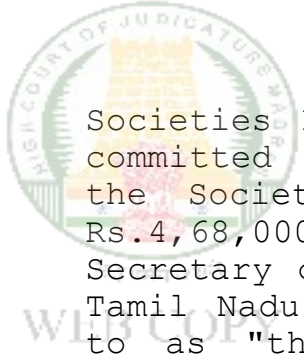
Mr.S.Mohandass for R2

J U D G M E N T

[Judgment of the Court by K.RAVICHANDRABAABU, J.]

This writ appeal is directed against the order of the Writ Court made in W.P.(MD) No.6868 of 2009, dated 06.02.2017, dismissing the writ petition filed by the appellant herein.

2. The writ petition was filed challenging the order of the first respondent - Tribunal in allowing the appeal filed by the second respondent herein against the surcharge order. It is contended by the appellant that the second respondent, while holding the office as President of M.D.6, Dindigul Circle Co-operative

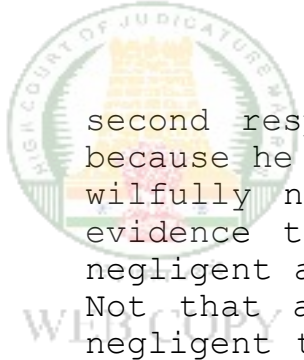


Societies Employees Thrift and Credit Society Ltd., Dindigul, has committed certain irregularities and misappropriated the funds of the Society during the year 1999 and thereby caused loss of Rs.4,68,000/- to the Society along with one D.Ravi, who was the then Secretary of the said Society. An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter, referred to as "the Act") was conducted and based on such enquiry, a surcharge order was passed under Section 87 of the Act on 24.02.2000, wherein and whereby the second respondent herein and the said D.Ravi were directed to pay a sum of Rs.4,68,000/- jointly and severally to the Society. When the said order was put to challenge before the Tribunal by the second respondent herein, the Tribunal, after considering the facts and circumstances in detail, found that the second respondent herein was not wilfully negligent in causing loss to the Society, on the reason that no evidence was let in to prove such wilful negligence on the part of the second respondent herein. Consequently, the Tribunal allowed the appeal and set aside the surcharge order insofar as the same fixing the joint and several liability on the second respondent herein is concerned. Challenging the said order, the appellant herein filed a writ petition. The Writ Court concurred with the view expressed by the Tribunal and dismissed the writ petition by specifically finding that there was no evidence to proceed further against the second respondent herein on the ground of wilful negligence and that the Tribunal has not committed any error in setting aside the surcharge proceedings initiated against the second respondent herein.

3. The learned counsel for the appellant invited our attention to the surcharge order to contend that the second respondent was negligent in discharging his duties and therefore, he is also liable. According to the learned counsel for the appellant, had the second respondent compared the entries made in the ledgers with his personal passbook, he would have detected the malpractice and forged entries made by the said Secretary D.Ravi and consequently averted the loss to the Society.

4. A careful perusal of the surcharge order would indicate that the said D.Ravi, functioning as Secretary at the relevant point of time, had made some forged entries in respect of a transaction amounting to Rs.3,50,000/-. The only lapse attributed on the part of the second respondent was that he failed to cross-check the entries made in the ledgers with his passbook. No doubt, such negligence on the part of the second respondent cannot be ruled out. But, at the same time, is it wilful or not is the question, which has to be looked into in order to fix the liability on the second respondent as well.

5. Admittedly, it is only at the instance of the second respondent, the surcharge proceedings were initiated and an enquiry under Section 81 of the Act was conducted, after he noticed such forged entries and corrections made in the ledgers at the later point of time. Thus, it shows the bona fide on the conduct of the



second respondent without giving any room for suspicion. Merely because he has not noticed immediately, it does not mean that he has wilfully neglected to notice the mistake, in the absence of any evidence to prove contra that the second respondent was wilfully negligent and he conspired to commit the offence with the Secretary. Not that all negligence are wilful. Unless the intention to be negligent that too in order to achieve some evil object, is pleaded and proved, every negligence cannot be termed as wilful. While "negligence" is a mistake, "wilful negligence" is a crime. The Tribunal below as well as the Writ Court found that no wilful negligence can be attributed on the part of the second respondent. No contra evidence or materials are placed before us except the surcharge order. As we already pointed out that the only observation made in the said order was that had the second respondent cross-checked the entries made in the ledgers with his passbook, the misappropriation would have been averted. Except making such observation, there is no other finding rendered to the effect that such failure was wilful. Therefore, when the fact finding authority, namely, the Tribunal as well as the Writ Court have found that there is no wilful negligence on the part of the second respondent, we find no reason to interfere with such findings, as we do not find any perversity in those findings.

6. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

The Principal District Judge,
Tribunal for Cooperative Societies,
Dindigul.

+1cc to M/S.V.O.S.Kalaiselvam, Advocate SR.No. 70969

W.A. (MD) No.657 of 2018

and

C.M.P. (MD) No.3624 of 2018

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krk

JM/RSK/SAR 2/18.07.2018/3P/3C