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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD) .No.609 of 2017 and
C.M.P. (MD) No.2719 of 2017

T.Rengarajan ... Petitioner/1st Appellant/ Respondent

Vs.

1. V.Ramachandran,
Enquiry Officer,
6103/2, Combined Co-operative Complex,
Annavaasal Road, Pudukottai.

2. The Deputy Registrar of Co-operative Societies,
6103/2, Combined Co-operative Complex,
Annavaasal Road, Pudukottai. ... Respondents/Respondents/
Surcharge Officers

3. S.Ramachandran ... Respondent/Appellant/Respondent

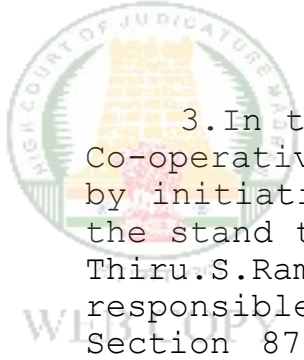
PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 18.01.2017 in C.M.A.(CS)No.2 of 2015 on the file of the Principal District Court, Pudukottai, by confirming the surcharge order in Na.Ka.2550/2014/Sa/Pa, dated 11.03.2015 passed by the Deputy Registrar of Co-operative Societies, Pudukottai.

For Petitioner	: Mr.G.Prabhu Rajadurai
For R-2	: Mr.M.Karuppasamy, Government Advocate.
For R-1	: No appearance.

ORDER

Tamil Nadu Co-operative Marketing Federation Limited(TANFED) is a state level co-operative body. It supplies various kinds of fertilizers to the farmers at a subsidized price through its regional offices which function in the various districts. The fertilizers are sent to Primary Co-operative Societies from where the farmers get their fertilizers.

2.TANFED is having a regional office at Pudukottai. From Pudukottai godown, it was made to appear as if several metric tons of fertilizers were despatched to some Primary Co-operative Societies. But actually no such consignments were sent. Bills were fabricated as if such consignments were sent. As a result, loss to the tune of RS.41,80,727.50/- had taken place.

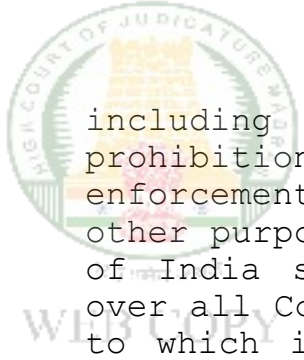


3. In this regard, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act 1983, was conducted. That was followed by initiation of surcharge proceedings. The TANFED management took the stand that the godown keeper Thiru.K.Duraisamy, Regional Manager Thiru.S.Ramachandran and internal Auditor Thiru.T.Rengarajan were responsible for this loss. After holding the enquiry in terms of Section 87 of the Tamil Nadu Co-operative Societies Act 1983, an order of surcharge was passed on 11.03.2015 fastening the liability on all the aforesaid three individuals jointly and severally. Aggrieved by the aforesaid order of surcharge, the Revision petitioner herein filed C.M.A.(CS)No.2 of 2015 before the Principal District Judge, Pudukottai. The Co-operative Tribunal by order dated 18.01.2017 dismissed the appeal filed by the Revision petitioner herein. Aggrieved by the same, this Civil Revision petition has been filed.

4. Heard the learned counsel appearing for the Revision petitioner as well as the learned Government counsel appearing for the second respondent.

5. When the matter was taken up for hearing, the learned Government counsel raised an objection regarding maintainability of the Civil Revision Petition. He pointed out that usually writ petitions are filed questioning such orders passed in surcharge appeals by the Co-operative Tribunals. He drew my attention to quite a few reported decisions rendered by the Hon'ble Division Benches in surcharge cases. It is a fact that questioning the orders passed by the Co-operative Tribunals in appeals filed against the orders of surcharge under Section 87 of the Act, writ petitions as well as civil revision petitions are filed by the aggrieved parties. As against the orders made in writ petitions, there is a further remedy before the Hon'ble Division Bench. But, if a civil revision petition under Article 227 of the Constitution of India is filed, there cannot be any further intra-court appeal. Thus, the choice of remedy does have an implication as regards the availability of appeal remedy. Of course, there is a possibility of forum-shopping too. The choice of Bench depends on the nature of remedy availed by the litigant. Hence, this Court is inclined to hold that as against the order passed by the Tribunal, one cannot have a choice of remedy. It should be either a civil revision petition under Article 227 of the Constitution of India or a writ petition under Article 226 of the Constitution of India. Since an objection regarding maintainability of the civil revision petition has been raised, the issue has to be answered one way or the other.

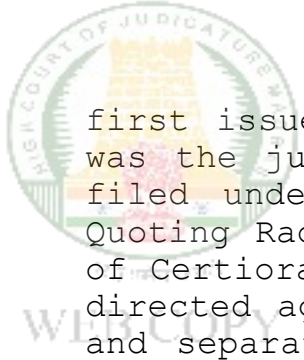
6. A comparison of the language set out in Article 226(1) of the Constitution of India and Article 227(1) of the Constitution of India would be useful. Article 226(1) of the Constitution of India states that every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs,



including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. On the other hand, Article 227(1) of the Constitution of India states that every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. The expression "tribunals" is found in Article 227(1) of the Constitution of India. On the other hand, Article 226(1) of the Constitution of India talks about issuing a writ to any person or Authority or Government. In fact, the maintainability of Revision petition against such orders was settled long time ago in the decision reported in (1952) 65 L.W.1229 (In re: Annamalai Mudaliar Vs. Unknown). It was held therein that a Civil Revision petition under Article 227 of the Constitution of India would lie against an appellate order passed by the Co-operative Tribunal in respect of surcharge proceedings under the Tamil Nadu Co-operative Societies Act.

7. Section 152(1)(a) of the Tamil Nadu Co-operative Societies Act 1983, states that any person aggrieved by any decision or award passed or order made or proceedings taken under sub-section(1) of Section 87 may appeal to the Tribunal. Section 151 of the Tamil Nadu Co-operative Societies Act, empowers the Government to constitute Co-operative Tribunals. Each Tribunal shall consist of one or more persons possessing the prescribed qualifications. But atleast one person shall be a judicial officer not below the rank of Subordinate Judge. At present the Principal District Judge acts as the Co-operative Tribunal in every district. Of course, the order of the Co-operative Tribunal though rendered by the Principal District Judge, cannot still be construed as a judicial order of the civil court in the technical sense of term. As authoritatively laid down in Radhey Shyam V. Chhabi Nath (2015) 5 S.C.C.423, jurisdiction under Article 227 is distinct from the jurisdiction under Article 226. The contrary view in Surya Dev Rai was overruled by the Full Bench of the Hon'ble Supreme Court. It has already been noted that as early as in the year 1952, the Madras High Court had held that CRP under Article 227 of the Constitution of India is available against the appellate orders of the Co-operative Tribunal in respect of surcharge proceedings. Therefore, in the very nature of things, it is only the jurisdiction under Article 227 that is to be invoked and not the writ jurisdiction under Article 226.

8. This conclusion is further fortified by yet another decision of the Hon'ble Supreme Court reported in (2015) 7 S.C.C. 373 (Himalayan Coop. Group Housing Society V. Balwan Singh). The appeal before the Hon'ble Supreme Court arose out of the writ proceedings which were instituted for setting aside the orders passed by the Registrar and the Co-operative Tribunal. The High Court even while observing that no case has been made out for interference with the orders passed by the Authorities below, issued certain directions to the appellant Society. The petition filed before the High Court was under Article 226 r/w Article 227 of the Constitution of India. The



first issue that was framed by the Hon'ble Supreme Court was what was the jurisdiction of the Court while dealing with the petition filed under Articles 226 and 227 of the Constitution of India. Quoting Radhey Shyam V. Chhabi Nath, it was observed that a Writ of Certiorari under Article 226 of the Constitution of India though directed against the orders of an inferior Court would be distinct and separate from the challenge to an order of an interior Court under Article 227 of the Constitution of India. The supervisory jurisdiction comes into play in the latter case and it is only when the scope and ambit of the remedy sought for does not fall within the purview of the scope of the supervisory jurisdiction under Article 227 of the Constitution of India, the jurisdiction of the Court under Article 226 of the Constitution of India could be invoked. It was finally observed as follows:-

"17. In the present case, what was challenged by the members of the Society was an order passed by the Registrar and the Revisional Authority under the provisions of the Act and the Rules framed thereunder. The prayer was to set aside the orders passed by the authorities below. Even if the said petition(s) were styled as a petition under Article 226, the content and the prayers thereunder being ones requiring exercise of supervisory jurisdiction only, could be treated as petitions filed under Article 227 of the Constitution only."

Therefore, I hold that the order passed by the Co-operative Tribunal disposing of an appeal under Section 152(1)(a) of the Act against the surcharge proceedings under Section 87 of the Act will be exclusively amenable to the revisional jurisdiction under Article 227 of the Constitution of India and a writ petition under Article 226 of the Constitution of India will not be maintainable.

9. Now coming to the facts of this case, it is seen that the Revision petitioner was appointed as an internal Auditor of TANFED for Trichy region. He was given additional charge of Pudukottai region on 07.06.2012. A mere look at the proceedings would go to show that it was Duraisamy, godown keeper who by fabricating and forging the consignment bills had caused loss to the TANFED. The stocks of fertilizers were entrusted with Duraisamy in Pudukottai godown. He made it appear as if they had been sent to other Primary Co-operative Societies. He had also prepared forged records in this regard. Actually he had sold them in the black market and misappropriated the proceeds. The lapse committed by the Revision petitioner is that he had blindly gone by such records forged by the said Duraisamy.

10. Section 87 of the Act reads as under:-

"87. Surcharge - (1) Where in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a society, it appears that any person who is or was entrusted

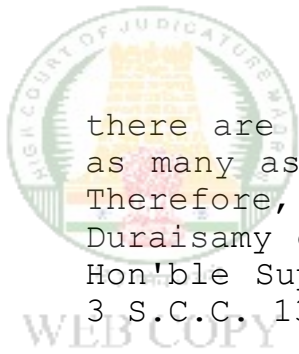


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with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has 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 by-laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to the representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:

....."

11. The aforesaid liability under Section 87 of the Act can be fastened on any person who is or was entrusted with the organisation or management of the Society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society. These circumstances will clearly not apply in the case of the Revision petitioner herein. The question is whether he has caused any deficiency in the assets of the society by breach of trust or willful negligence. It was Duraisamy who by his acts of breach of trust caused deficiency in the assets of the society. In other words, the Revision petitioner by his negligence did not cause any loss to the society. By fraudulently removing the fertilizers from the godown, its keeper Duraisamy had already caused deficiency in the assets of the society. Loss as an event had already occurred. The Revision petitioner as the internal Auditor failed to discover the crime committed by Duraisamy. It may be a serious lapse which may warrant the initiation of disciplinary action against him. But then, to fasten surcharge liability one must be guilty of willful negligence. In this case, the Revision petitioner herein was acting as an internal Auditor not only for Pudukottai region but also for Trichy region. In Trichy region,



there are 348 societies. Pudukottai region also, in which there are as many as 132 societies was given to him as an additional charge. Therefore, this lapse in not discovering the crime committed by Duraisamy cannot constitute willful negligence. It was held by the Hon'ble Supreme Court in the decision reported in (1994) Supplement 3 S.C.C. 134 (Surinder Nath Dewan V. State of Haryana) as follows:-

"3. ... The word 'wilfulness' imported premeditation or knowledge and consciousness that an injury or loss was likely to result from the act done or from the omission to act. It imported a constructive intention as to the consequence. Quoting an earlier judgment, delivered by Pandian, J. (as he then was) in Sathyamangalam Cooperative Urban Bank Ltd. V. Dy. Registrar of Cooperative Society ((1980) 2 M.L.J. 17), it held that to constitute wilful negligence, the act done or omitted to be done must involve such reckless disregard of duty as to imply bad faith. ..."

12. Applying the aforesaid standard, I am of the view that the materials on record cannot lead to the conclusion that the Revision petitioner herein was guilty of willful negligence. There is nothing on record to sustain the finding that the Revision petitioner was in collusion with the godown keeper. Hence, the orders impugned in this Civil Revision petition are set aside.

13. The Civil Revision petition stands allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal District Judge, Pudukottai.

2. The Deputy Registrar of Co-operative Societies, Pudukottai.

Copy To:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1CC to Mr. G. Prabhu Rajadurai, Advocate, SR.No. 90376

+1CC to the Special Government Pleader SR.No. 90477

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