



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.09.2018
PRONOUNCED ON : 30.10.2018

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD).No.1045 of 2016 and
C.M.P. (MD) No.5214 of 2016

Sundar Rajan ... Petitioner/Appellant
Vs.

1. The Deputy Registrar of
Co-operative Societies,
Cheranmahadevi,
Tirunelveli District. ... Respondent/Respondent

2. Ayyadurai
3. Rathinasamy
4. Essakiammal
5. Thangadurai
6. Rajalakshmi
7. Kumaresan
8. P.Devaraj
9. Annalingam ... Respondents/Respondents
(Respondents 3 to 9 were
set exparte and
notice may be dispensed with)
10. Michael ... Respondent/Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the orders passed by the first respondent in S.C.No.1/2003-2004 dated 30.09.2004 which has been subsequently partly confirmed by the learned Principal District Judge, Tirunelveli, in C.M.A.(CS)No.47 of 2009 vide his order dated 09.12.2014 and set aside the same.

For Petitioner : Mr.P.Samuel Gunasingh

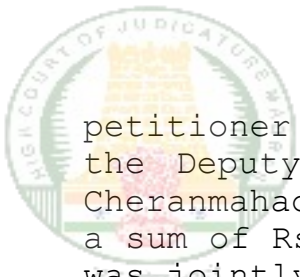
For R-1 : Mr.M.Karuppasamy,
Government Advocate.

For R-2 and R-10 : No appearance.

For R-3 to R-9 : Ex-parte.

O R D E R

The Revision petitioner was the President of E.E.42, Kavalkinaru Primary Agricultural Co-operative Bank during 1996-2001. Surcharge proceedings were initiated against the Revision



petitioner and others and an order dated 30.09.2004 was passed by the Deputy Registrar of Co-operative Societies, Cheranmahadevi, directing the Revision petitioner and others to pay a sum of Rs.1,17,583/- to the Bank with 12% interest. This liability was jointly and severally fastened on the persons concerned.

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2. Aggrieved by the same, the Revision petitioner filed C.M.A. (CS)No.47 of 2009 before the Special Tribunal for Co-operative cases/Principal District Judge, Tirunelveli. The appeal was partly allowed on 09.12.2014 and the Revision petitioner was found liable in respect of charges 1 and 2. Questioning the same, this Civil Revision petition has been filed.

3. Heard the learned counsel on either side.

4. The principal contention urged by the learned counsel appearing for the Revision petitioner is that the authority who passed the surcharge order did not conduct the proceedings like a suit. This failure to do so would vitiate the entire proceedings. In this regard, he placed reliance on the decision reported in 2012 (1) C.W.C. 794(M.Karuppannan V. The Deputy Registrar(Dairying)). He also contended that the Revision petitioner was acquitted in the criminal case. Morethan anythingelse, at his instance the erring employees are being prosecuted.

5. The foremost contention of the Revision petitioner's counsel is that Section 87(4) of the Tamil Nadu Co-operative Societies Act, 1983 states that the authority acting under Section 87 of the Act shall have all the powers of the civil Court while trying the suit under the Civil Procedure Code, in respect of the following matters, namely,

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any Court or office;
- (e) issuing commission for examining of witnesses.

According to the learned counsel, the conferment of such powers means that the surcharge proceedings will have to be conducted like a civil suit. He placed reliance on paragraph No.8 of the decision reported in 2012 (1) C.W.C. 794(M.Karuppannan V. The Deputy Registrar(Dairying)), as follows:-

"8. A perusal of the award of the 1st respondent, would go to show that no evidence, either oral or documentary, was recorded. As has been pointed out by the learned counsel for the petitioner under Section 87(4) of the Act, the office, who is holding enquiry under Section 87 of the Act shall have all the powers of a Civil Court while trying a Civil



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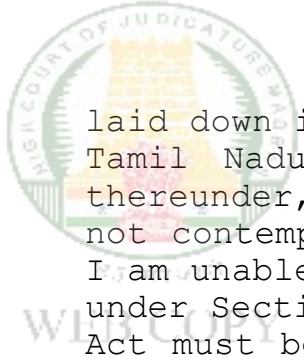
Suit under the Code of Civil procedure and he has got power to enforce the attendance of any person and examine him on oath and also receive evidence on Affidavits. This would clearly indicate that the Enquiry Officer, while holding enquiry under Section 87 of the Act, is to record evidence on oath or at least he should receive evidence on Affidavit from the parties. It is also clear that as per Section 87(4)(e) of the Act, he has got power even to issue commission for examining of witnesses. Under Section 87 of the Act the authority is directed to adjudicate upon the disputed facts on evidence to be let in, either oral or documentary evidence, before him. Without the evidences, either oral or documentary, if any adjudication is made it could surely stated that it is out of surmise and such finding is perverse, which cannot be sustained in this case, a perusal of the award of the 1st respondent does not reflect recording of any oral evidence or reception of evidence on Affidavit or production of any documentary evidence. In fact, this Court directed the learned Counsel appearing for the Respondents 1 & 2 to produce the original records to ascertain as to whether the procedure contemplated under Section 87(4) of the Act, was, in fact, followed or not. The learned Counsel after referring to the records would submit that the Enquiry Officer perused the report of the auditor. But no oral evidence was recorded on the side of the 2nd Respondent. Instead, the statements of the Petitioner and the Respondents 3 & 4 were recorded. It is also not on oath as required under Section 87(4)(a) of the Act. Therefore, such statement cannot be treated as oral evidence at all, for want of administration of oath. There was no other evidence recorded and there was no documentary evidence also exhibited. In view of the above position, as rightly contended by the learned counsel for the Petitioner, there can be no difficulty in holding that the adjudication made by the 1st Respondent is perverse as the same has been done on no evidence. For a moment, I want to remind that in Writ jurisdiction, this Court cannot convert itself into either a Court of Appeal or Revision to re-appreciate the evidence and to substitute its own conclusion in the place of the conclusion arrived at by



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the 1st Respondent is found to be perverse, i.e., bases on no evidence, then, it is for this Court to interfere with the said award. To put it otherwise, if the award has been made on some evidence, this Court will not interfere with the same inasmuch as the domain of re-appreciation of evidence is not with this Court in this Writ Petition. But, at the same time if it is found that it is the case of no evidence upon which the conclusion has been arrived at, surely, this court has to interfere with inasmuch as such conclusion is perverse. In this case, as I have, already stated, the conclusion has been arrived at on no evidence and, therefore, the award of the 1st respondent which came to be confirmed by the Co-operative Tribunal/Principal District Court, Erode needs to be interfered with."

6. I am unable to agree with the aforesaid submission of the learned counsel appearing for the Revision petitioner. Section 87(1) of the Act contemplates framing of charges against the person concerned for making good the loss caused to the society. The occasion for framing such a charge will arise where in the course of an audit under Section 80 or an enquiry 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 the person has committed the acts referred to in Section 87(1) of the Act and has caused loss to the society. All that the provision requires is that the surcharge order shall be passed after giving a reasonable opportunity to the person concerned. Though Chapter VII of the Tamil Nadu Co-operative Societies Rules, 1988 bears the heading "Audit, Inquiry, Inspection or Investigation, Surcharge and Supersession", it is seen that the rules do not lay down any particular procedure regarding the surcharge. The fact that Sub-section 4 of Section 87 of the Act confers on the authority acting under the Section, all the powers of the civil Court while trying a suit in respect of certain matters laid down in Section 87(4)(a) to (e) of the Act that does not mean that the surcharge proceedings themselves will have to be conducted like a suit. The conferment of a statutory power does not necessarily in all cases import a duty to exercise the same. Of course, the principles of natural justice are incorporated explicitly. The authority is mandated to pass an order only after giving a reasonable opportunity. It is useful to refer to the statutory scheme set out in Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Section 63 of the said Act provides for holding of enquiries. Rules have also been framed setting out the manner in which the enquiries are to be held. It is specifically laid down in Rule 20 of the Holding of Inquires Rules that the provisions of the Code of Civil Procedure and the Civil Rules of Practice and Circular Orders shall apply as far as practicable, and that the inquiry shall be made, as far as practicable in the manner



laid down in the Code of Civil Procedure for the trial of suits. In Tamil Nadu Co-operative Societies Act and the rules framed thereunder, there is no such corresponding provision. A procedure not contemplated by the Legislature cannot be introduced by Courts. I am unable to find any statutory basis for holding that the enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act must be conducted like a suit. I am not therefore persuaded by the ruling laid down in 2012 (1) C.W.C. 794 (M.Karuppannan V. The Deputy Registrar(Dairying)). Hence, I am unable to agree with the submission of the learned counsel appearing for the Revision petitioner that the orders impugned in the Civil Revision petition will have to be set aside on the sole ground that the surcharge proceedings have not been conducted like a suit. Again, merely because the person concerned was acquitted in the criminal proceedings that does not mean that the surcharge proceedings would also go automatically.

7. Coming to the facts of this case, it is seen that a sum of Rs.92,000/- was withdrawn through a cheque belonging to the Revision petitioner through his account. In fact the account balance was showing Rs.30/-. The Revision petitioner admitted that the cheque in question belonged to him. But his defence was that the cheque was stolen by the Secretary of the society, namely, Tamilselvi and an employee, by name, Sridevi who had illegally withdrawn the same. His further grievance is that the cheque in question was not marked during the proceedings. It is seen from the records that the Revision petitioner herein did not appear during the surcharge proceedings except on one occasion. He also did not give any statement. Therefore having not availed the opportunity given to him, it is not open to the Revision petitioner herein to now complain that the proceedings were not conducted like a suit. In fact the authorities below have held that the cheque in question was deliberately suppressed. There is no dispute that the cheque No.360 was given to the Revision petitioner in respect of his account and therefore, it was the Revision petitioner's duty to keep the cheque book in his safe custody and if it was misused, he cannot now be heard to say that it was stolen. In fact these are the matters that lie within his special knowledge. It is also seen that the Revision petitioner did not lodge any complaint immediately. Only after a lapse of several months, when he himself was sought to be fastened with liability, he chose to give a police case against the said Tamilselvi and Sridevi.

8. In fact even though the Revision petitioner was sought to be fastened with the liability on as many as five heads, the Tribunal set aside the liability cast on him in respect of the other heads and confirmed his liability only under two heads. This shows that the Tribunal had applied its mind to all the aspects of the case before partly allowing the appeal. No ground has been made out to interfere with the well considered Judgment passed by the Tribunal. There is no merit in this Civil Revision petition.



9. The Civil Revision petition stands dismissed, accordingly.

10. At this juncture, the learned counsel appearing for the Revision petitioner states that when this Court granted an interim order and imposed a condition that the Revision petitioner should deposit a sum of Rs.50,000/-. He complied with the said condition. When his surcharge liability is computed, this deposit will be taken taken into account. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

To

1. The Principal District Judge,
Tirunelveli.
 2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)
- +1cc to M/s.Special Government Pleader,SR.No. 93374

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