



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.09.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.NPD[MD]No.1842 of 2016
and
C.M.P.[MD]Nos.8860 of 2016

1.G.S.S.Marimuthu
2.M.Jeyakodi
3.K.Palanisamy
4.K.Rajendran
5.M.Natrayan
6.V.Karuppaiah

: Petitioners

Vs.

1.P.V.Paramasivam
2.K.S.Muruganantham
3.S.Ramaraj
4.S.Palanisamy

5.The Deputy Registrar of Co-operative Societies,
(Surcharge Officer),
Palani,
Dindigul District.

: Respondents

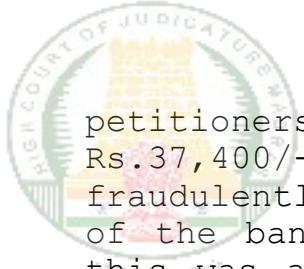
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Judgment and Decree made in C.M.A.(C.S)No.20 of 2006 by the Special Tribunal for Co-operative Cases (Principal District Court), Dindigul dated 08.02.2016 confirming the order made in S.C.No.3 of 2004 dated 23.11.2004 by the Deputy Registrar of Co-operative Societies, Palani.

For Petitioners : Mr.D.Venkatesh

For Respondent No.5 : Mr.M.Karuppasamy
Government Advocate

O R D E R

This Civil Revision Petition arises out of surcharge proceedings. The first petitioner herein was the President of one D.D.105 Pachalur Primary Agricultural Co-operative Bank. The other



petitioners were members of the Executive Committee. A sum of Rs.37,400/- [Rupees Thirty Seven Thousand and Four Hundred only] was fraudulently transferred to the account of one Malayalam, the member of the bank and has been misappropriated. It came to light that this was appropriated by one Paramasivam. The said Malayalam was the member of the bank. A forged application was submitted in his name and a resolution was passed for sanctioning the loan. Since the society had suffered loss, surcharge proceedings were initiated. The Deputy Registrar of co-operative Societies, Palani passed surcharge order on 23.11.2004 under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. The said order was questioned by filing C.M.A.(C.S)No.20 of 2006. The special Tribunal for Co-operative cases (Principal District Court), Dindigul by order dated 08.02.2016, dismissed the said C.M.A. Aggrieved by the same, this Civil Revision Petition has been filed.

2.Heard the learned Counsel on either side.

3.Learned Government Counsel took me through the materials enclosed in the typed set of papers and submitted that the order passed by the fifth respondent was justified and that it was correctly sustained by the Tribunal and that no interference is called for.

4.It is true that except the first and the third petitioner, others remained ex-parte. But then, merely because most of the revision petitioners herein remained ex-parte, the authority could not have passed a surcharge order against them. An order of surcharge can be passed if the revision petitioners were found guilty of misappropriating the funds of the society. The allegation against the revision petitioners is not that they had misappropriated the funds. Therefore, the petitioners could be saddled with surcharge order only if it is specifically found based on materials that there was willful negligence. This Court went through the contents of surcharge order as well as the order passed by the tribunal. All that has been stated against the petitioners was that they were careless and negligent. The willful element has not been established. In the present case, if without the signature of member, the loan application has been processed and sanctioned, then the petitioners are to be dealt with. In this case, the signature in the name of the member was forged by the Secretary himself. The petitioners cannot be reasonably expected to suspect the forgery. Therefore, this Court comes to the conclusion that the essential ingredient for fastening liability under Section 87 of the Co-operative Societies Act, namely, 'willful negligence' is absent in this case. The Tribunal also proceeds to hold that liability was rightly fixed on the petitioners herein. The Tribunal has not analysed anywhere the records, the existence of the foundational materials in support of the charge of willful negligence. In this view of the matter, the order impugned in this civil revision petition is set aside. The Civil Revision Petition is allowed. The Counsel for the first petitioner submits that he had already paid a



sum of Rs.50,000/- by way of complying with the conditions imposed by this Court. Since the Civil Revision Petition itself is allowed, the first petitioner shall be refunded the said amount. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1 The Special Tribunal for Co-operative Cases
(Principal District Court),
Dindigul.

2.The Deputy Registrar of Co-operative Societies,
(Surcharge Officer),
Palani,
Dindigul District.

+1. C.C. to M/S.D.Venkatesh, Advocate SR.No. 85850
+1 cc to Special Government Pleader, SR.No. 85882

ORDER MADE IN
C.R.P.NPD[MD]No.1842 of 2016
19.09.2018

MR
JM/20.08.2019/3P/5C