



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2018

CORAM:

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**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.A.(MD)No.1580 of 2011

and

M.P(MD)No.1 of 2011 and C.M.P.(MD)No.313 of 2016

1.S.Selvaraj
2.K.Kaliappan
3.E.Vijayakumar Muthumani
4.P.Jebasingh John Rathnaraj
5.R.Ganeshkumar

:Appellants/Petitioners 1 to 5

Vs.

1.The Deputy Registrar of Co-operative Societies,
O/o. The Deputy Registrar of Co-operative Societies,
Tuticorin - 2.

2.The Special Officer,
Tuticorin Melur Co-operative Bank Ltd. O 159,
No.31-A, North Sambandamoorthy Street,
Turicorin - 628 002.

:1st & 2nd Respondents/
Respondents 1 & 2

3.A.Chandrasekar

:3rd Respondent/ 6th Petitioner

PRAYER: Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 15.11.2011 made in W.P.(MD)No.5389 of 2010.

Prayer in WP(MD). 5389/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI, to call for the records in pursuant to the Impugned Notice issued by the 1st Respondent in Na.Ka.3741/2009/Sa.Pa dated 16-02-2010 and Quash the same.

For Appellant : Mr.M.Saravanakumar

For Respondents 1 & 2 : Mr.CM.Marichelliah Prabhu
Additional Government Pleader

For Respondent No.3 : No appearance

**JUDGMENT**

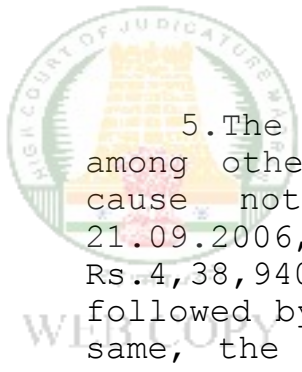
(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.)**

The writ petitioners are the appellants and they made a challenge to the notice dated 16.02.2010, issued by the first respondent, for initiation of proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 [hereinafter referred to as "the Act"]. The writ petition, after contest came to be dismissed vide order dated 15.11.2011 and challenging the legality of the same, the present writ appeal is filed.

2.The appellants would state that the appellants 1 to 3 / petitioners 1 to 3 were working as Branch Managers and that rest of them were working as Assistants in the Branch Office of the second respondent cooperative bank. They would aver that one Mr.Ganagaraj was working as General Manager in the service of the second respondent bank and in his official capacity has entered into One Time Settlement (OTS) in the year 2002 with four creditors, namely, K.Senthoorpandi, Seeniammal, Sundararajan and A.Sowndhirapandi and waived the interest and the entire arrears amount was paid by the said creditors and their loan accounts were also closed in the year 2002 and 2003. It is also pointed out by the appellants that Mr.Ganagaraj had also retired from service on 30.11.2004 and as per the submission of the learned counsel appearing for the appellants, he is no more.

3.The appellants / writ petitioners would state that the second respondent Bank, has made allegation against Mr.Ganagaraj, the then General Manager stating that on account of the waiver of interest, a loss has been caused to them and upon receipt of the same, the first respondent has conducted an enquiry against Mr.Ganagaraj, the then General Manager and he has also submitted his explanation and the first respondent vide report dated 24.11.2004, has clearly indicated that no loss has been caused to the second respondent bank. The first respondent in turn, sent a communication dated 27.11.2004 to the Joint Registrar of Cooperative Societies, Tuticorin, stating that the allegations made in the petitions are vexatious and no loss has been caused to the second respondent Bank. The appellants / writ petitioners also stated that nearly after a lapse of eight years, the first respondent appointed an Inspection Officer under Section 82 of the Act, on 02.03.2003, to enquire the fact with regard to the waiver of interest granted by the then General Manager Mr.Ganagaraj and upon receipt of the same, the Inspection Officer has issued summons and directed the appellants / writ petitioners to appear for enquiry to be held on 28.04.2009.

4.It is the specific case of the appellants / writ petitioners that without conducting true and proper enquiry and without following the due process of law and in gross violation of the principles of natural justice, the said official has submitted a report on 08.06.2009 based on which the first respondent has issued the impugned notice under Section 87 of the Act.



5.The first respondent has filed the counter affidavit stating among other things that the second respondent has issued a show cause notice to the then General Manager, Mr.Ganagaraj on 21.09.2006, calling upon him to explain as to why the loss of Rs.4,38,940/- should not be recovered from him and it was also followed by another notice dated 22.11.2006 and upon receipt of the same, the said official has issued legal notice dated 01.12.2006, denying the allegations and also took a stand that he is not responsible for any loss.

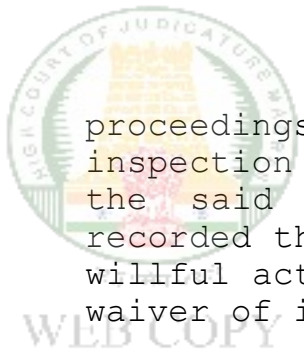
6.Thereafter, the second respondent has passed a resolution dated 12.12.2006, requesting the first respondent to permit him to recover the loss and the first respondent returned the same on the ground that it is not maintainable under Section 90 of the Act. Therefore, the second respondent requested the first respondent to cause inspection under Section 82 of the Act on 04.02.2009. Accordingly, the first respondent ordered an enquiry under Section 82 of the Act vide proceedings dated 02.03.2009 and appointed the Cooperative Sub-Registrar (Inspection) as enquiry officer and the petitioners were also called upon to appear before him and upon completion of the enquiry, the enquiry officer submitted the report on 08.06.2009, holding that the appellants / writ petitioners are also responsible for the loss caused on account of waiver of interest.

7.It is the stand of the first respondent that due procedure and process of law has been followed and it is for the appellants / writ petitioners to come out with clean hands.

8.The second respondent has also filed the counter affidavit supporting the stand of the first respondent and also took a stand that the then General Manager Mr.Ganagaraj has failed to obtain prior permission from the higher officials in waiving the interest and further the loan accounts have been closed and no ratification has also been obtained.

9.The learned Judge, after taking note of the rival submissions and applying the ratio laid down in the judgment in G.Pannerselvam and others Vs. Deputy Registrar of Cooperative Societies, Dharmapuri and others reported in (2009) 2 MLJ 901 and A.Balaraman and others Vs. Deputy Registrar of Cooperative Societies, Cheyyar, Thiruvannamalai District and others reported in (2009) 3 MLJ 1032, held that no case has been made out warranting interference and accordingly, dismissed the writ petition. Challenging the legality of the same, the present writ appeal has been filed.

10.Mr.M.Saravanakumar, learned counsel appearing for the appellants / writ petitioners would submit that the fact remains that Mr.Ganagaraj had retired from service on 30.11.2004 and while he was in service, no surcharge proceedings have been initiated and he is also no more and the petitioners who are subordinates, has been merely mulcted with the liability to face the surcharge



proceedings and also invited the attention of this Court to the inspection report dated 08.06.2009 and would submit that even as per the said inspection report, no finding has been specifically recorded that the appellants / writ petitioners, on account of their willful act and negligence has caused the alleged loss on account of waiver of interest.

11.The learned counsel appearing for the appellants / writ petitioners in support of his submission has placed reliance upon the following judgments:

i)S.Subramanian Vs. The Deputy Registrar of Cooperative Societies (Housing), Cuddalore and others (Division Bench) reported in 2002 (3) L.W. 185;

ii)A.Janakiraman and another Vs. Deputy Registrar of Cooperative Societies, Kumbakonam and another reported in (2009) 6 MLJ 1051; and

iii)S.Andiyannan Vs. The Joint Registrar, Cooperative Societies, Madurai and another (Full Bench) reported in 2015 Writ L.R. 755.

12.Per contra, Mr.CM.Marichelliah Prabhu, learned Additional Government Pleader appearing for the official respondents would contend that the appellants / writ petitioners in collusion with Mr.Ganagaraj has caused loss to the society and based on the inspection report, notice has been issued to the appellants / writ petitioners under Section 87 of the Act and it is for them to overcome the same and therefore, the challenge made is pre-mature. He would further add that the learned Judge on correct appraisal of the facts has rightly reached the conclusion to dismiss the writ petition and prays for dismissal of this writ appeal with costs.

13.This Court has considered the rival submissions and also perused the materials placed before it.

14.It is not in serious dispute that Mr.Ganagaraj, the then General Manager of the second respondent bank, under "One Time Settlement" (OTS) scheme has waived the interest paved by the loanees, namely, K.Senthoorpandi, Seeniammal, Sundararajan and A.Sowndhirapandi and pursuant to the waiver of interest, they also paid the entire arrears amount. It is also to be pointed out at this juncture that Mr.Ganagaraj, the then General Manager of the second respondent bank retired from service on 30.11.2004, whereas the surcharge proceedings sought to be initiated only after his retirement and the second respondent has issued a show cause notice only on 21.09.2006 ie., after his retirement. A Full Bench of this Court in S.Andiyannan's case (cited supra) has considered the issue relating to initiation of surcharge proceedings after the retirement of the summoned officials and it is relevant to extract paragraph No.27;



employee or any other person who has caused financial loss to the cooperative society. It is not in dispute that the term "surcharge" need not necessarily related to punishment being imposed on the employee. As contended by the learned counsel appearing for the petitioners, the scope of Section 87 of the Act pertaining to surcharge is to recover the amount from the person, who caused loss to the co-operative society. In the light of the decisions rendered by the Hon'ble Apex Court, it is clear that Section 87 of the Act could not be construed as an enabling provision to the authorities to continue or extend the departmental proceeding after the retirement of an employee. It is well settled in various decisions of the Hon'ble Supreme Court that if the loss caused by any employee is established, in the manner known to law, the employer / co-operative society can recover the amount, by way of surcharge with or without interest, however, surcharge proceeding cannot be initiated against any retired employee."

15.It is also brought to the knowledge of this Court that Mr.Ganagaraj, the then General Manager is also no more.

16.The inspection report dated 08.06.2009, submitted by the Cooperative Sub-Registrar (Inspection) / enquiry officer, based on which the impugned notice came to be issued would also disclose that there is no finding that the petitioners while discharging the duties, willfully and deliberately caused loss to the said society and in fact, in the inspection report, the role played by Mr.Ganagaraj, the then General Manager is projected as a prominent one.

17.Incidentally, a question arose for consideration in this writ appeal that in the absence of any finding with regard to the willful dereliction of duty on the part of the concerned officials, whether proceedings under Section 87 under the Act can be initiated?

18.In S.Subramanian Vs. The Deputy Registrar of Cooperative Societies (Housing), Cuddalore and others (Division Bench) reported in 2002 (3) L.W. 185, the said issue arose for consideration and a Division Bench of this Court after placing reliance upon three decisions in paragraph No.12 and 13 observed as follows:

"12.In the present case it has to be pointed out that no finding has been recorded by the first respondent or by the third respondent to establish that the deficiency had been caused wilfully or deliberately or with a view to cause loss to the assets of the society. Nowhere a finding has been rendered either by the first respondent or by the



third respondent in their proceedings that the petitioner is guilty of wilful negligence or wantonness, nor it has been recorded that omission or commission on the part of the petitioner is deliberate, reckless or callous or loss has been caused deliberately to the assets of the society.

13. In the absence of such finding, as has been consistently held by this Court, that the petitioner is guilty of wilful or deliberate negligence or there is intention to cause loss to the assets of the society, it follows that the impugned surcharge proceedings in so far as the petitioner is concerned are liable to be quashed."

19. In A. Janakiraman and another Vs. Deputy Registrar of Cooperative Societies, Kumbakonam and another reported in (2009) 6 MLJ 1051, a Single Bench of this Court after taking note of the various decisions, dealt that the willful dereliction of duty having been un-established against the petitioner, the recovery proceedings initiated against the petitioner cannot be maintainable. In the considered opinion of this Court, the said decision would fully apply to the facts of this case.

20. As already pointed out, the enquiry report of the Cooperative Sub-Registrar (Inspection) dated 08.06.2009, did not indicate that the appellants / writ petitioners were willfully negligent or guilty of dereliction of duty and even as per the counter affidavit of respondents 1 and 2, it was Mr. Ganagaraj, the then General Manager of the second respondent Bank in One Time Settlement (OTS) scheme has waived the interests of the above said four loanees and they have also settled the entire amount.

21. In the absence of any specific finding as to the willful dereliction of duty on the part of the respondents, initiation of the proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, in the considered opinion of this Court is un-sustainable.

22. In the result, the writ appeal is allowed and the order dated 15.11.2011 made in W.P.(MD) No. 5389 of 2010 and the impugned notice of the first respondent dated 16.02.2010 in Na.Ka.No. 3741/2009/Sa.Pa are set aside.

23. It is also brought to the knowledge of this Court that during the pendency of the writ appeal, all the appellants retired from service and on account of the pendency of this writ appeal, the amount of loss is said to have been caused has been withheld proportionately. In the light of the allowing of the writ appeal, the second respondent is directed to disburse the said amount as per the eligible proportion to the appellants / writ petitioners within a period of eight weeks from the date of receipt of a copy of this



order. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar

To

1.The Assistant Commissioner,
HR & CE Administration Department,
Nagercoil, Kanayakumari District.

2.The Executive Officer,
Arulmigu Isakki Thirukoil,
Muppandal, Thovalai Taluk,
Kanyakumari District.

+1CC TO M/S.M.SARAVANA KUMAR, ADVOCATE, SR NO.48695

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.48824

W.A.(MD)No.1580 of 2011

14.02.2018

MR

MS/KK/SAR-4/14.03.2018/7P.5C