

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-08-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.1809 of 2013

M.Venkatraman

..Appellant

Vs.

1.The Principal District Court,
Erode District,
Erode.

2.The Deputy Registrar of Co-operative Societies,
Gobi Circle,
Gobichettipalayam,
Erode District.

3.Tmt.Rajammal
4.C.Ashok Kumar
5.Sugasini
6.Tmt.Vijayalakshmi

7.AA.205, The Sikkarasampalayam Primary
Agrl.Co-op.Bank Ltd.,
rep.by its President (now by the Special Officer),
Sikkarasampalayam & Post,
Sathyamangalam Taluk,
Erode District.

..Respondents

Appeal under Clause 15 of the Letters Patent against
the Order, dated 25.01.2012, passed in W.P.No.12440 of 2004 on
the file of this Court.

Prayer in WP.No.12440/2004 : Writ Petition has been filed under
Article 226 of the Constitution of India prayer for a Writ of
Certiorari calling for the records dated 25.11.2003 made in
C.M.A.No.99/2000 on the file of the Respondent.

For Appellant : Mr.S.Kamadevan
For Respondent 2 : Mr.L.P.Shanmugasundaram,
Spl.Govt.Pleader.
For Respondents 3 to 5 : Mr.R.T.Doraisamy

JUDGMENT
(By Dr.Vineet Kothari,J.)

This Writ Appeal has been filed by one Mr.M.Venkatraman, Son of Mr.Marannan, an Accountant, along with Mrs.P.Vijayalakshmi, a Jewel Appraiser, employed in the Respondent Bank, are the writ petitioners and are aggrieved by the order passed by the learned Single Judge, by which, the Writ Petitions filed by both of them came to be dismissed, with the following observations:

''7. I have considered the rival submissions.

8. Since a preliminary objection is raised in respect of the maintainability of these writ petitions, I propose to deal with the same at the first. Admittedly, direction for payment of interest is part of the award made by the second respondent. If the petitioners have got any grievance over the same, they would have very well challenged that part of the award passed by the second respondent by filing appropriate appeal before the Co-operative Tribunal. It is not explained to the Court as to why the petitioners have not availed the appeal remedy available (sic) to them. The petitioners herein were the respondents in the appeal preferred by the legal representatives of the deceased Secretary. Even then, the petitioners did not choose to challenge the award made by the second respondent. In my considered opinion, without challenging the award made by the second respondent by preferring appropriate appeal, it is not at all open for the petitioners to directly approach this Court under Article 226 of the Constitution of India.

9. The question whether the second respondent has got power to impose interest on the principal amount could have also been raised by way of challenge in an appeal before the Co-operative Tribunal. Without doing that, in my considered opinion, the petitioners cannot approach this Court invoking Article 226 of the Constitution of India, and on this ground, I am inclined to dismiss these writ petitions.

10. In the result, the writ petitions are dismissed as not maintainable. No costs. Consequently, connected miscellaneous petitions are closed.''

2. Mr.S.Kamadevan, learned counsel for the Appellant, urged before us that since the deceased Secretary of the Seventh Respondent - AA.205, The Sikkarasampalayam Primary Agricultural Co-op.Bank Ltd.- Mr.C.N.Chinraj, one of the three persons involved in the alleged misappropriation, had deposited the entire amount of Rs.6,05,049.25 with the Bank, the learned Deputy Registrar of Co-operative Societies and also the learned Principal District Judge have erred in imposing interest on the alleged amount of misappropriation on the said officials of the Seventh Respondent Bank.

3. The Deputy Registrar of Co-operative Societies, Gobichettipalayam, has passed an order on 05.08.1999 under Section 87 (1) of the Tamil Nadu Co-operative Societies Act,1983, the operative portion of which is quoted below for ready reference :

"As detailed above, the activities such as not crediting the repayments received on the jewel loan, deposit loan, consumer loan, sanctioning loans, returning the jewels and deposit amounts pending repayment of previous loans, sanctioning loans by creating forged documents and forged signatures, disbursing loans without administrative sanction, making false entries in the ledgers directly and preparing forged documents to allow other officers to indulge indirectly by taking advantage of their capacity, acting hand in glove with co-officers and the misdeeds of late Tr.C.N.Chinraj, former secretary, Tr.M.Venkatraman, the present Assistant Secretary and Tmt.P.Vijayalakshmi, Jewel Assessor, leading to the loss of funds to the tune of Rs.6,05,049.25 were proved by documentary evidences, witnesses examined and their statements.

Therefore, I hereby pass the surcharge award u/s 87 (1) of Tamilnadu Cooperative Societies Act,1983 against the legal heirs of late C.N.Chinraj, former Secretary of the Bank who have agreed in writing on 19.05.99 and 21.06.1999 and Tr.M.Venkatraman; to Tmt.P.Vijayalakshmi to recover the misappropriated amount with interest @ 21% p.a. from the date of misappropriation and to be remitted into credit of AA205 Chickarampalayam Primary Agricultural Cooperative Bank.

I hereby further order that if any amount is recovered either during enquiry or prior to, after deducting the amount already recovered, the balance shall be remitted with interest @ 21% p.a.

Dictated by me and typed by the typist and issued on the 5th day of August 1999 under my signature and office seal."

4. The learned Principal District Judge, Erode, dealing with the appeal against the said order of the Deputy Registrar of Co-operative Societies, in his order, dated 25.01.2012, however, reduced the rate of interest from 21% per annum to 12% per annum from the date of misappropriation till the date of payment of the aforesaid amount of Rs.6,05,049.25 by one of the three officials involved in the misappropriation, namely, Mr.C.N.Chinraj, the former Secretary of the Bank. The operative portion of the order of the learned Principal District Judge as Appellate Authority is also quoted below for ready reference :

'11. Result in C.M.A.No.99/2000 :-

In the result, this Civil Miscellaneous Appeal is partly allowed and the order dated 5.8.1999 passed by the Deputy Registrar of Co-operative Societies, Gobichettipalayam in RC.No.8233/98A is modified to the effect that the appellants along with the erstwhile accountant of the bank Thiru.M.Venkataraman and Jewel Appraiser Tmt.P.Vijayalakshmi are liable only to pay interest at the rate of 12% per annum from the respective date of misappropriation till the date of payment of the above said amount of Rs.6,05,049.25 and with regard to the other aspects, the order of the Deputy Registrar of Co-operative Societies, Gobichettipalayam, is set aside. There is no order as to costs.

Dictated to Steno, transcribed by him, corrected and pronounced by me in Open Court, this the 25th day of November, 2003 (Karthigai 9th Subanu year 2034 Thiruvalluvar Andu).

Sd./R.Mohandoss
Principal District Judge.'

Aggrieved by the same, the Appellant-Mr.M.Venkataraman and Mrs.P.Vijayalakshmi preferred Writ Petition Nos.12440 and 5758 of 2004 respectively before the learned Single Judge, which came to be dismissed by the order impugned before us, dated 25.01.2012, as quoted above.

5. Aggrieved by the same, one of them, the Appellant - Mr.M.Venkataraman has filed this Intra Court Appeal.

6. Mr.S.Kamadevan, learned counsel for the Appellant, has drawn our attention towards Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, which provides for the Registrar to recover any amount of misappropriation after an audit/inquiry under Section 80 or 81 of the Act and after framing a charge and holding an inquiry in the matter. The said provision provides

for passing of an order by such Registrar requiring the person concerned to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised by him thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the Society by way of compensation in respect of the misappropriation, misapplication of funds etc.

7. The contention of the learned counsel for the Appellant is that no award was passed by any competent authority, as the money in question of alleged misappropriation has already been deposited by the former Secretary concerned, namely, Mr.C.S.Chinraj, who has unfortunately expired and, therefore, the question of levy of interest on the Legal Representatives of the said Mr.C.S.Chinraj does not arise and unless some order determining the interest is passed, the appellant cannot be saddled with the said liability.

8. On the other hand, Mr.L.P.Shanmugasundaram, learned Special Government Pleader, appearing for the Second Respondent - Co-operative Societies - supported the impugned order.

9. Mr.R.T.Doraisamy, learned counsel, representing the Legal Representatives of Mr.C.N.Chinraj, who are Respondents 3 to 5 herein, has submitted that since the amount in question of the alleged misappropriation has been deposited by the legal heirs of Mr.C.N.Chinraj, they are not liable to pay the interest.

10. Having heard the learned counsel for the parties, we are satisfied that there is no merit in the present appeal and the same deserves to be dismissed.

11. Firstly, it is wrong to contend that no award has been passed by the competent authority, namely, Registrar under Section 87 of the Act. The Award, dated 05.08.1999, passed by the Deputy Registrar of Cooperative Societies, Gobichettipalayam, is nothing but an order/award passed under Section 87 of the Act, in which, the Deputy Registrar discussed all the relevant facts, including the manner in which the alleged misappropriation took place, and found that even though the amount in question has been deposited by the Legal Representatives of the former Secretary of the Cooperative Bank-Mr.C.N.Chinraj, he has directed the payment of interest at the rate of 21% per annum from the date of misappropriation till the date of payment of amount by the Legal Representatives of the said former Secretary.

12. Since the misappropriation/defalcation took place on various dates, it is natural that interest would be computed from the relevant date of misappropriation till the amount is

deposited back with the Bank. The rate of interest has been left to the discretion of the Registrar under Section 87 of the Act and the same was imposed by the Registrar at 21% per annum. However, on appeal, the learned Principal District Judge, exercising his powers as Appellate Authority under the said Act, reduced the said rate of interest from 21% per annum to 12% per annum.

13. We do not find any error in the imposition of interest as such by the Deputy Registrar and its reduction of rate by the learned Principal District Judge and, therefore, the learned Single Judge cannot be said to have been erred in upholding the order of the learned Principal District Judge, by dismissing the Writ Petition vide the order impugned before us.

14. The liability to pay the misappropriated amount is joint and several of the persons involved in the misappropriation against whom an inquiry under Section 87 of the Act has been held and, therefore, there is no question of determining the liability separately or independently for each of them.

15. Therefore, the contention of the learned counsel for the Legal Representatives of the deceased Secretary that since the amount in question has been deposited by the Legal Representatives of the deceased Secretary, they cannot be held liable to pay interest also, cannot be accepted.

16. Thus, we do not find any merit in the present appeal and the same is liable to be dismissed, which is, accordingly, dismissed.

17. We hold that all the three persons in question who were involved in the misappropriation are jointly and severally liable to deposit the amount of interest, as determined by the learned Principal District Judge, Erode, at 12% per annum from the date of misappropriation till the date of deposit of the amount in question, including the Legal Representatives of the former Secretary-Mr.C.N.Chinraj, and they should deposit the same within a period of two months from today.

18. No costs. Consequently, the connected M.P.No.1 of 2013 is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Erode District,
Erode.

2.The Deputy Registrar of Co-operative Societies,
Gobi Circle,
Gobichettipalayam,
Erode District.

+1 cc to M/s.S.Kamadevan, Advocate Sr.No. 66877

+1 cc to Mr.L.P.Shanmugasundaram, Advocate Sr.No.66868

+1 cc to The Government Pleader Sr.No.67076

AKM/16.09.19/7P- 6C /

W.A.No.1809 OF 2013



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