

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM :

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

C.R.P. (NPD) No.2106 of 2009

and

C.M.P.No.1 of 2009

The Management of M/s.Coimbatore District
Central Co-operative Bank,
Rep. by its General Manager P.N.Ramanantham,
Opp. Railway Station,
Coimbatore – 18.

... Revision Petitioner

Vs.

1.S.P.Rajan

2.S.Kasinathan

3.P.Sakthivel

4.The Deputy Registrar of Co-operative Societies,
Collectorate Campus,
Coimbatore.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 26.03.2008 passed in C.M.A.No.68 of 2005 on the file of the District & Sessions Court, Coimbatore, against the order dated 29.04.2003 in Thaa.Thee No.2 of 2002 on the file of the Deputy Registrar of Co-operative Societies, Coimbatore.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.C.Murugesan for R2

: No appearance for R1, R3 & R4

ORDER

Aggrieved by the order of the District and Sessions Court, Coimbatore, allowing the appeal filed by the 1st respondent against the order of surcharge passed by the 4th respondent in Thaa.Thee No.2/2002/Sa.Pa.1, dated 29.04.2003, the present revision has been filed.

2.The brief facts leading to the filing of this revision are as follows :

3.The surcharge proceedings was initiated against 2nd and 3rd respondents, who are the servants of the Coimbatore District Central Co-operative Bank, Valparai Branch (hereinafter referred as the "Society") on the ground that, they have committed a forgery on Demand Drafts with the connivance of a customer of the Society, who is the 1st respondent herein, and have caused a loss to the Society to a tune of Rs.2,67,905/-. An enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (for brevity, the "Act") and pursuant to the same, the surcharge proceedings was initiated against the above staff of the Bank.

4.Eventually, in the surcharge proceedings, the Enquiry Officer has passed an award dated 29.04.2003, wherein, he has directed a sum of Rs.2,67,905/- to be paid by the 1st and 2nd respondents herein with penal interest.

5.Challenging the above order, the 1st respondent has filed an appeal in C.M.A.No.68 of 2005 before the Co-operative Tribunal and District Court, Coimbatore.

6.The Appellate Court, in the judgment and decree dated 26.03.2008, has made a finding that the appellant was not enquired under Section 81 of the Act, nor had he been served with any notice, nor had he been made a party to the surcharge proceedings under Section 87 of the Act and ultimately, has set aside the order of the Enquiry Officer, as against which, the present revision has been filed by the Society.

7.The learned counsel for the revision petitioner submitted that, though, the 1st respondent was not enquired under Section 81 of the Act and not made a party to the surcharge proceedings under Section 87 of the Act, the Enquiry Officer had found that he was also involved in causing loss to the Society along with the servants of the Society. Therefore, the finding of the Enquiry Officer is based on the factual findings and is well balanced.

8. At the outset, I am unable to agree with the contention of the learned counsel. It is appropriate to note that no complaint or prosecution, whatsoever, is initiated against the 1st respondent, being a customer of the Society, on the allegation that he has also committed a criminal offence along with the servants of the Society. The 1st respondent herein is neither a servant nor a member of the Society and is only a customer of the said Co-operative Bank. Further, it is also to be noted that, neither to the enquiry under Section 81 of the Act, nor to the surcharge proceedings under Section 87 of the Act, he was made a party, and no notice, whatsoever, was served on him. However, the Enquiry Officer has directed him to pay the amount with penal interest, which is *per se* illegal.

9. It is useful to refer Section 87 of the Act.

"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 with the organization 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 authorized 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 his 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 any such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation 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 authorized as aforesaid thinks just."

A careful perusal of the provisions of Section 87 of the Act makes it clear that, the very surcharge proceedings itself can be initiated only against any person, who is or was entrusted with the organisation or management of the Society, or against any past or present officer or servant of the society, who has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the Society or has caused any deficiency in the assets of the society.

10. Therefore, in the light of the provisions cited *supra*, to initiate surcharge proceedings against a person, such person must be either a present or past servant of the Co-operative Society. Admittedly, the 1st

respondent is a third party and is no way connected with the affairs of the Society. Merely based on the allegation against the servants of the Society that they have connived with the customer/third party and have caused loss to the Society, such third party cannot be subjected to the surcharge proceedings. Hence, I find no error or illegality in the order passed by the District & Sessions Judge, Coimbatore, in C.M.A.No.68 of 2005.

11.In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.03.2019

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Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

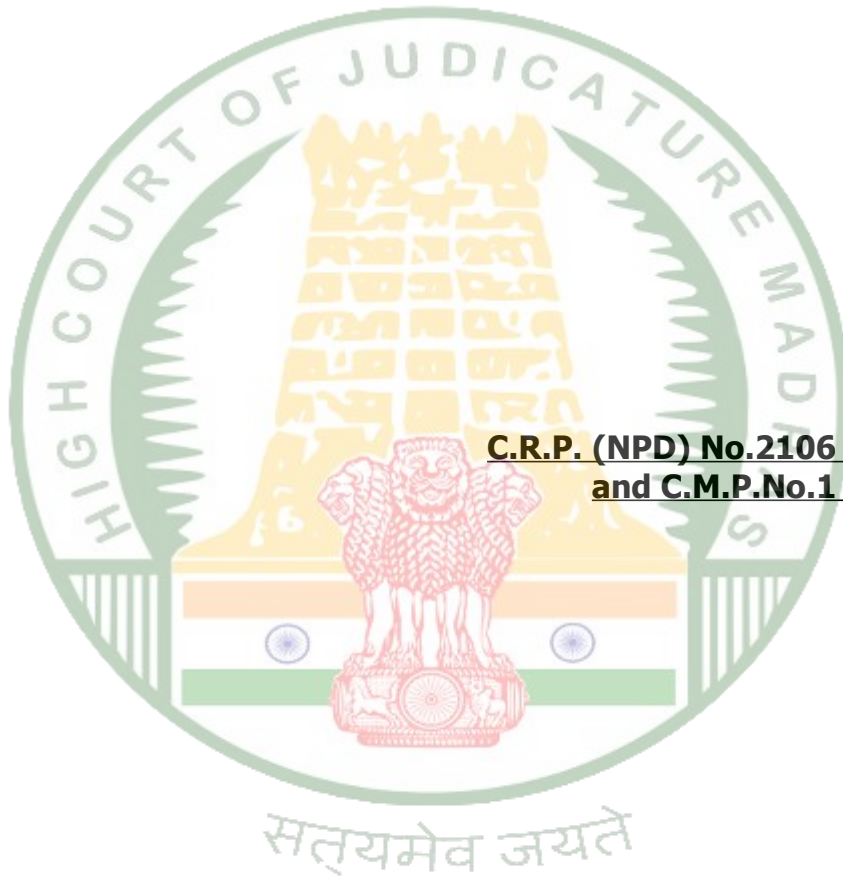
To

1.The Principal District Judge,
District & Sessions Court,
Coimbatore.

2.The Deputy Registrar of Co-operative Societies,
Collectorate Campus,
Coimbatore.

N. SATHISH KUMAR, J.

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