

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P.No.3185 of 2011

Mallasamudram Primary Agricultural
Co-op Credit Society,
Rep.by its Special Officer,
Mallasamudram,
Tiruchengode Taluk,
Namakkal District.

...Petitioner/3rd Party

Vs

1. M.R.Manickam

2. The Deputy Registrar of
Co-operative Societies,
Tiruchengode Taluk,
Namakkal District.

3.The Secretary,
Palacenagar Co-operative
House Building Society,
Cherry Road,
Salem.

..Respondents /Appellant
/Respondents 1 & 2

PRAYER:This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the Judgment and decree in C.M.A.(CS). No.13 of 2008 dated 24.11.2010 on the file of the Principal District Judge, Namakkal.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents: No appearance

O R D E R

This Civil revision petition has been filed challenging the order of the Co-operative Tribunal in setting aside the Surcharge Proceedings dated 29.04.2008.

2.Heard the learned Counsel for the revision petitioner. Despite name printed in the cause list, none has appeared on behalf of the respondents.

3.It is an admitted fact that Surcharge proceedings was initiated against the then Secretary of the revision petitioner society viz., Mallasamudram Primary Agricultural Co-operative Credit Society. The then Secretary, contrary to the rules and Sections of the Co-operative Societies Act, had deposited a sum of Rs.10,00,000/- in the Palacenagar Co-operative House Building Society which was a primary co-operative society for a period of three years. The said period expired on 12.07.2003. However, the amount deposited by the Secretary in Palacenagar Co-operative House Building Society has not been repaid. Till 30.06.2007, it appears that a sum of Rs.4,50,000/- has been returned to the revision petitioner society. Thereafter, on 20.11.2007, an another sum of Rs.7,49,983/- has been paid to the revision petitioner society.

4.It is seen that Surcharge order has been passed on the basis of Audit report during the year 2005-2006 as against which the appeal was filed by the then secretary/1st respondent herein before the Co-operative Tribunal challenging the surcharge proceedings. The said appellate Tribunal has observed that the Surcharge proceedings was initiated against the then Secretary cum President who was responsible for causing loss due to the delayed payment. In surcharge proceedings dated 29.04.2008, the enquiry officer found that the then Secretary of the revision petitioner society was liable to make a deficit for a sum of Rs.1,74,061/- However, the Co-operative Tribunal has concluded that the said due amount, has to be necessarily paid by the Palacenagar Co-operative House Building Society in which the amount has been deposited and held that the appellant has not misappropriated any of the funds and also not committed any willful negligence and the appellant is not liable to pay the amount. Thus, considering the facts and circumstances, the Surcharge order dated 29.04.2008 was set aside by the Co-operative Tribunal.

5.It is seen that while filing an appeal, the revision petitioner society which has complained the loss, has not been made as party. Without making the revision petitioner society as one of the parties to the proceedings, the society which received the amount in fixed deposit has been made as 2nd respondent in the appeal.

6.In fact, the Co-operative Tribunal had adopted a casual approach in setting aside the surcharge order without insisting the appellant to array the revision petitioner society as a party to the appeal. Such a casual approach, in my view, is nothing but clear non application of mind by the Co-operative Tribunal.

7.The very dispute itself is between the revision petitioner

society and its then Secretary for causing loss to the Society. Only when the revision petitioner society is impleaded as a party to the proceedings, it could be found that whether the Secretary was acted in willful negligence or not, disregard to the rules and regulations. Without making them as a party and obtaining orders is nothing but nullity.

8. Accordingly, order of the Co-operative Appellate Tribunal is hereby set aside and the matter is remitted back to the Co-operative Appellate Tribunal. The revision petitioner society shall file an application to implead themselves as a party in the appeal within a period of one month from the date of receipt of the copy of this order. On such application, the Co-operative tribunal shall allow the application and permit them to be a respondent in the above appeal and thereafter, decide the appeal on merits and dispose of the appeal within a period of four months from the date of receipt of the copy of the said application.

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Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Namakkal.
2. The Deputy Registrar of Co-operative
Societies,
Thiruchengode (Tk),
Namakkal Dist.
3. The Secretary,
Palacenagar Co-operative
House Building Society,
Cherry Road,
Salem.

+1cc to Mr.S.Planiswamy, Advocate, SR.No.34542

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Kak (22/05/2019)