IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.2204 of 2013

The Special Officer
Dharmapuri District Central
Co-operative Bank,
Dharmapuri. ... Petitioner

Vs.

1.Kuppusamy

2.The Deputy Registrar,
Co-operative Societies,
Dharmapuri. ... Respondents

Prayer:

Petition filed under Article 227 of the Constitution of India praying to set aside the judgment in CMA(CS) No.16 of 2010 dated 30.11.2011 on the file of the District Co-operative Tribunal, Principal District Court, Dharmapuri.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents : Mr.G.Sankaran for R1
(vak. retd. for payment CF of Rs.10)
No Appearance for R2

O R D E R

This civil revision petition has been filed as against the order of the District Co-operative Tribunal, wherein, the learned Principal District Judge has allowed the appeal filed by the first respondent herein, challenging the surcharge proceedings initiated against him under Section 87 of the Tamil Nadu Co-operative Societies Act, on the basis of the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act.

2.Surcharge was levied as against the first respondent herein and one another Appraiser of the Primary Co-operative Society, on the basis of the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and surcharge order has been passed for recovery of a sum of Rs.58,000/- as against the first respondent herein and one another. A challenge has been made against the surcharge proceedings by the first respondent herein.

3.The learned Principal District Judge, District Co-operative Tribunal, Dharmapuri, has allowed the appeal filed by the first respondent herein on the ground that there is absolutely no material available to hold that the first respondent herein has wilfully committed the act and that there was no wilful negligence on his part in causing loss to the society. As against which, the present revision has been filed.

4.The background of the facts is as follows: The first respondent herein was the Branch Manager of the Theerthamalai Co-operative Bank from 12.02.2001 till 12.07.2001 and he was incharge of the Bank for nearly five months. An enquiry was conducted on the allegation that one Kannan has pledged feigned jewels and obtained a loan of Rs.58,000/-. The first respondent herein has passed the loan on the basis of the Appraiser's report. Therefore, enquiry was proceeded and surcharge was levied. The learned District Co-operative Tribunal has found that it is only the duty of the Appraiser to find out the feigned gold at the time of pledging. It is the specific duty assigned to the Appraiser to value the gold and to find out any feigned gold.

5.In the present case, the Appraiser has certified that the gold is genuine one and based on that, as a Manager, the first respondent herein, has just passed the loan. Further, in enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act, there is no material available on record to show that the first respondent herein has acted deliberately and that there was wilful negligence on his part. Accordingly, the learned Principal District Judge, District Co-operative

Tribunal, Dharmapuri, allowed the appeal filed by the first respondent herein, as against which, the present revision has been filed.

6.The learned counsel appearing for the revision petitioner would submit that there is a Circular dated 22.01.1999, wherein responsibility is fixed not only on Appraiser but also on the Bank Manager and Secretary and others. The Tribunal has not considered this Circular. When there is a specific responsibility fixed under the Circular, the Bank Manager ought to have been vigilant, whereas, he has acted contrary. That itself amounts to wilful negligence. Hence he submitted that the order of the first Appellate Court is not on proper appreciation of evidence of law. Further, the first Appellate Court has also held that enquiry is barred by the law of limitation.

7.Heard and perused the materials available on record.

8.No doubt the Tribunal has allowed the appeal on two grounds. First ground is that there is no wilful negligence on the part of the first respondent herein. The Tribunal also held that there was delay in initiating proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act. Therefore surcharge is barred. It is well settled that the limitation provided under Section 81 of the Tamil Nadu Co-operative Societies Act is only directory and not mandatory. Hence, the Tribunal's observation and finding that limitation for conducting enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act is mandatory is not correct.

9.However, with regard to the other findings of the Tribunal, I have perused the Report. Except attaching Section 81 of the Tamil Nadu Co-operative Societies Act Report and a Circular there are no other materials to hold that the Bank Manager was negligent wilfully and acted deliberately in connivance with the Appraiser.

10.It is to be noted that Circulars are only general guidance and Appraiser is in the form of an Expert specifically appointed in Societies and Banks to value the gold and to find out the genuine and feigned gold. When an Expert was appointed in that particular field, one cannot expect the Manager to find out the nature of the gold when the loan was passed. The very purpose of appointing Appraiser indicate that it is his responsibility to check the gold when it is presented before the Bank. When the Appraiser certified the article as a genuine one and fit for pledging, there is no option available for the Manager except to follow the procedure for granting loan and the same thing has been done by the first respondent in this case.

11.Therefore, when the Bank Manager has passed a loan on the basis of the Certificate issued by the Appraiser, he cannot be fastened with the liability on the ground that the gold is found to be feigned one. Further, he cannot be fastened with the liability for the act deliberately committed by the Appraiser who was specifically appointed for the subject purpose to identify the gold.

12.Therefore, I am of the view that in the absence of any materials or evidence establishing the wilful negligence on the part of the first respondent, merely on the basis of some Circular orders, he cannot be fastened with liability under Section 87 of the Tamil Nadu Co-operative Societies Act. The Circular relied upon by the learned counsel appearing for the revision petitioner would state that appraising has to be done in the presence of Manager and Secretary. The Appraiser is said to be an Expert to certificate that the particular article is genuine one. The Manager who has no experience or Expert in that field has no other option except to rely upon the certificate issued by the Appraiser.

13.Therefore, I am of the view that absolutely there is no material available on record to fix liability and there was no wilful negligence established as against the first respondent. Hence, the order of the Tribunal allowing the appeal, on the above ground does not warrant any interference. The revision has no merits and it is dismissed.

14.This civil revision petition is accordingly dismissed. No costs.

21.02.2019

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To

1.The District Co-operative Tribunal,
Principal District Court, Dharmapuri.

2.The Deputy Registrar,
Co-operative Societies,
Dharmapuri.

N.SATHISH KUMAR,J.
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