

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.11.2019

Pronounced on : 13.12.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(NPD)No.2215 of 2013
and M.P.No.1 of 2013

1.B.Srinivasan (Died) .. 1st Petitioner / 1st Appellant

[Civil Revision Petition is dismissed
as against the 1st petitioner vide
order dated 21.11.2019 in
C.R.P.[NPD]No.2215 of 2013]

2.R.S.Namasivayam .. 2nd Petitioner / 2nd Appellant

versus

1.The Deputy Registrar of
Cooperative Societies,
Krishnagiri.

2.The Special Officer,
S-2004, Masinaickenpalli Primary
Agricultural Cooperative Bank,
Panchashipuram Village & Post,
Hosur Taluk, Krishnagiri District.

.. Respondents / Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 23.11.2012 made in C.M.A.(C.S.)No.8 of 2009 on the file of the Special Tribunal for Cooperative Cases [Principal District Judge], Krishnagiri, confirming the surcharge order passed by the 1st respondent in Surcharge Order No.2/2005/Sa/Pa/1 dated 29.09.2008 and set aside the same.

For 2nd Petitioner : Mr.V.Jeeva Giridharan
For Respondent No.1 : Ms.T.Girija
Government Advocate (Co.op)
For Respondent No.2 : Mr.P.K.Shivakumar
for M.S.Palaniswamy

ORDER

This Civil Revision Petition is directed against the judgment and decree dated 23.11.2012 made in C.M.A.(C.S.)No.8 of 2009 on the file of the learned Special Tribunal for Cooperative Cases [Principal District Judge], Krishnagiri, confirming the Surcharge Order dated 29.09.2008 passed by the first respondent in Surcharge Order No.2/2005/Sa/Pa/1 and to set aside the same.

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2. This Civil Revision Petition is dismissed as against the 1st petitioner is concerned, vide order dated 21.11.2019.

3. Brief facts leading to the filing of this Petition are that, the appellants in C.M.A.(C.S.)No.8 of 2009 on the file of the learned Special Tribunal for Cooperative Cases [Principal District Judge], Krishnagiri, are the petitioners herein. Originally, based on the 81 Enquiry Report given by the Enquiry Officer, the first respondent herein initiated proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act [hereinafter called as "the Act"] in No.2/2005/Sa/Pa/1 dated 29.09.2008 and passed an award, by holding that the petitioners are also liable for the loss sustained to the second respondent Society.

4. Challenging the award dated 29.09.2008, the petitioners preferred C.M.A.(C.S.)No.8 of 2009 before the learned Special Tribunal for Cooperative Cases [Principal District Judge], Krishnagiri.

5. After affording an opportunity to the respondents herein, the Special Tribunal for Cooperative Cases [Principal District Judge], Krishnagiri, by an order dated 23.11.2012, dismissed the Civil Miscellaneous Appeal and confirmed the award passed by the first respondent.

6. Aggrieved over the same, the petitioners are before this Court with the present Civil Revision Petition.

7. When at the time the Civil Revision Petition came up for hearing, the learned counsel appearing for the petitioners made a submission that, the petitioners are the third parties to the affairs of Masinaickenpalli Primary Agricultural Cooperative Bank. Since the petitioners are the employees under the District Central Cooperative Bank, they were not at all liable for the loss sustained to the Society. In this regard, on 06.04.2009 itself, the first respondent had issued a Circular in RC.38614/2009/F2(1) in the said Circular, the same was mentioned as follows;

"As per the provisions contained under Section 87 of the Act, surcharge actions based on the findings of the Enquiry Officer under Section 81 or inspection or investigation under Section 82 of the Act relating to a Primary Agricultural Cooperative Societies, cannot be legally taken against the employees of the District Central Cooperative Bank, though they are also responsible for the irregular sanction".

8. The learned counsel further would contend that the first respondent is not at all having any power to initiate the proceedings under Section 87 of the Act, against the petitioners. Without appreciating the said

Circular, even after knowing the fact that the petitioners are the employees of the District Central Cooperative Bank, the first respondent passed an award against the revision petitioners. The learned Presiding Officer, has also not went upon the said Circular and dismissed the Civil Miscellaneous Appeal, which is against the settled provisions of law. Accordingly, the learned counsel prayed to allow this Civil Revision Petition and to set aside the order passed by the Court below.

9. Per contra, the learned counsel appearing for the first respondent would contend that, though the petitioners are the employees of the District Central Cooperative Bank, since they were entrusted with the duty of supervision over the internal affairs of the Masinaickenpalli Primary Agricultural Cooperative Bank, they were treated as employees of the said Bank, more than that both the petitioners deliberately allowed the other employees for committing misappropriation and only because of the said reason that the nature of work allotted to the petitioners with the Bank, in which, the alleged fraud has committed, the Enquiry Officer, who appointed for conducting enquiry under Section 81 of the Act came to the conclusion that the petitioners are also held responsible for the loss sustained to the Masinaickenpalli Primary Agricultural Cooperative Bank. Accordingly, he prayed to dismiss this Civil Revision Petition.

10. The learned counsel appearing for the second respondent would contend that, since both the Court below concurrently came to the same conclusion, the same has not liable to be set aside.

11. Upon considering the arguments advanced by the learned counsels appearing on either side, it is not in dispute that the petitioners are entrusted with the work of supervision over the Society, in which, the alleged occurrence had happened. However, they are the employees of the District Central Co-operative Bank, Krishnagiri. It is also not the case of the respondents that the particular property of the Primary Agricultural Cooperative Bank, Masinaickenpalli, was entrusted with the petitioners. It is admitted on either side that the petitioners are paid servants under the District Central Co-operative Bank, Krishnagiri and was entrusted with the periodical inspection of accounts of Primary Agricultural Cooperative Bank, Masinaickenpalli, which comes under the control of District Central Cooperative Bank.

12. In this occasion, Mr.V.Jeevagiridharan, learned counsel appearing on behalf of the petitioners relied upon a Circular issued by the first

respondent in RC.No.38614/2009/SF2(1) dated 06.04.2009 wherein, it has held as follows;

"Whenever the officer holding inquiry under Section 81 or Inspection or Investigation under Section 82 of the Tamil Nadu Cooperative Societies or any other Society indebted to a Central Cooperative Bank concluded in his report that staff of a Central Cooperative Bank are also responsible for the alleged irregularities in the sanction and disbursement of loans in the Primary Agricultural Cooperative Societies, or in other indebted society from the funds borrowed or reimbursed from the Central Cooperative Bank, the Deputy Registrar / Joint Registrar shall order a separate inquiry under Section 81 or inspection or investigation under Section 82 of the Central Cooperative Bank also and shall take surcharge actions under Section 87 against the staff of the Central Cooperative Bank based on the findings of the Enquiry Officer or Inspection or Investigation Officer for consequent deficiencies caused to the assets of the Central Cooperative Bank by way of breach of trust and willful negligence."

13. Relying on the said Circular, the learned counsel appearing for the petitioners would further submit that without ordering a separate enquiry against the petitioners under Section 81 of the Act, the impugned order which passed against the petitioners, is erroneous in law.

14. In this occasion, it is relevant and useful to consider the judgment of this Court passed in W.P.No.7826 of 2018 and W.M.P.No.9767 of 2018, in which, in the similar situation, this Court only relied upon the above referred Circular and quashed the impugned order passed against the staff, who is the staff under the District Central Cooperative Bank, with liberty to initiate separate enquiry proceeding under Section 81 of the Act, against the said staff.

15. Applying the said principle herein also, the surcharge proceedings initiated against the petitioners is not based upon the enquiry conducted in the District Central Cooperative Bank, Krishnagiri. In the impugned order, the learned Special Tribunal for Cooperative Cases [Principal District Judge], Krishnagiri, while at the time of disposing C.M.A.(C.S.)No.8 of 2009, without appreciating the same, had dismissed the appeal filed by the

revision petitioners. Therefore, it is appropriate to quash the proceedings initiated against the second petitioner under Section 87 of the Act, with liberty to the appropriate authority to initiate separate enquiry under Section 81 of the Act in the Society, in which, the second petitioner was working as paid servant. Accordingly, Surcharge case initiated against the revision petitioners under Order No.2/2005/Sa/Pa/1 dated 29.09.2008 is set aside, with liberty to initiate separate inquiry proceeding under Section 81 of the Act, in the Society in which the second respondent was working.

16. In the result, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

13.12.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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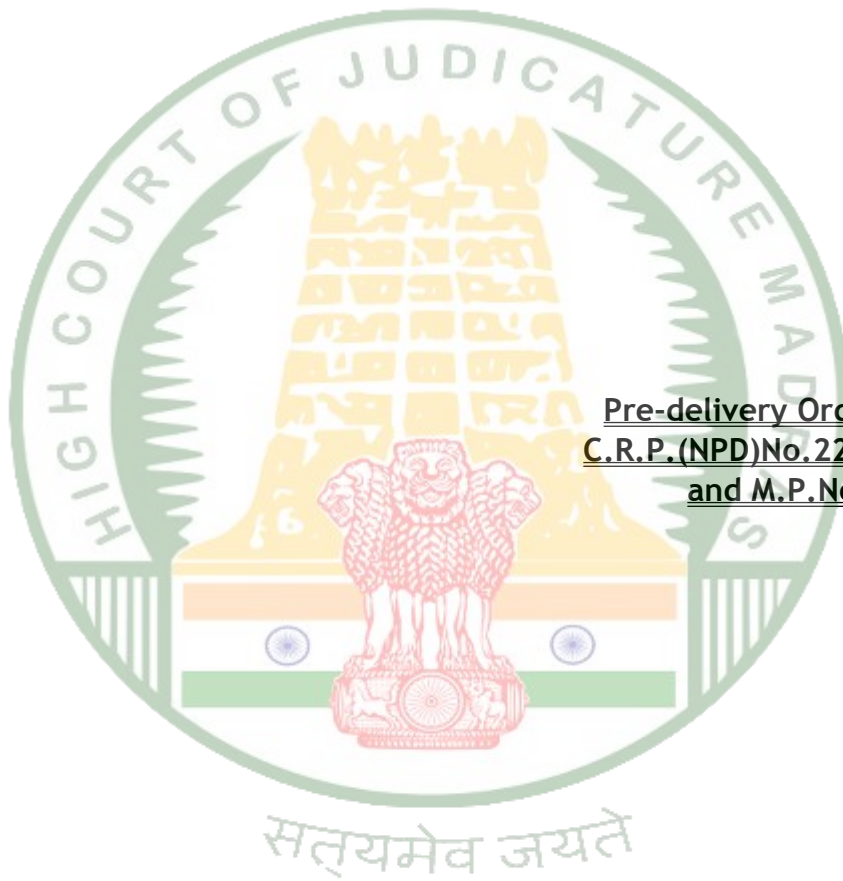
To

- 1.The Special Tribunal for Cooperative Cases
[Principal District Judge],
Krishnagiri.
- 2.The Deputy Registrar of Cooperative Societies,
Krishnagiri.
- 3.The Special Officer,
S-2004, Masinaickenpalli Primary
Agricultural Cooperative Bank,
Panchashipuram Village & Post,
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R.PONGIAPPAN, J.,
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Pre-delivery Order made in
C.R.P.(NPD)No.2215 of 2013
and M.P.No.1 of 2013

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