

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.11.2019

Pronounced On : 04.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) Nos.1703, 2697 & 2698 of 2014  
and  
M.P.Nos.1 to 1 of 2014

1. S.A.Basha ... Petitioner in CRP PD No.1703/14
2. K.Thirumavalavan ... Petitioner in CRP PD No.2697/14
3. P.Rajamanimaran ... Petitioner in CRP PD No.2698/14

Vs

1. The Special Officer,  
T.Neduncherry Primary Agricultural  
Co-operative Credit Society,  
T.Neduncherry, Chidambaram Taluk.

2. The Deputy Registrar of  
Co-operative Society,  
Cuddalore,  
Kanagasabai Nagar,  
Chidambaram.

.. Respondents in all CRPs.

**Common Prayer:** Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal orders each dated 14.11.2013 made in CMA (CS) Nos.41, 42 & 43 of 2011, on the file of the learned Principal District Judge, Cuddalore.

For Petitioners : Mr.S.Sathish Rajan  
in all CRPs.

For Respondents : Mr.P.K.Shivakumar (for R1)  
in all CRPs. for Mr.M.S.Palaniswamy

Mr.L.P.Shanmugasundaram (for R2)  
Spl. Govt. Pleader (Co-op)

**COMMON ORDER**

The petitioners in CRP Nos.1703, 2697 and 2698 of 2014, are the appellants in CMA (CS) Nos. 41, 42 and 43 of 2011, on the file of the learned Principal District Judge, Cuddalore.

2. Originally, the appellants in CMA (CS) Nos.41, 42 & 43 of 2011, were working as Cashier, Assistant Secretary and Junior Assistant, respectively, in Primary Agricultural Co-operative Credit Society, T.Neduncherry, Chidambaram Taluk. At the relevant point of time, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 [hereinafter referred to as 'Act'] were initiated against these appellants and against some other persons. After the conclusion of the enquiry, the enquiry officer, filed his report on 28.12.2007.

3. In the report submitted by the enquiry officer, he has concluded that the appellants herein have willfully, without following the circular orders, Government Orders, terms and conditions, especially, without identifying the borrowers, whether they are agriculturists or not, granted loan to 66 beneficiaries, after preparing forged chitta and adangal, due to

which, loss has occurred to the tune of Rs.17,23,040/- to the Primary Agricultural Co-operative Credit Society, T.Neduncherry, Chidambaram Taluk.

4. After concluding as above, a show cause notice was issued under Section 87 of the Act in Na.Ka.No.6832/07/Ku.Na. dated 05.06.2008. Subsequently, on 15.04.2011, the 2<sup>nd</sup> respondent passed orders in Na.Ka.No.6832/2007Sa.Pa confirming the findings arrived at, against the appellants in Section 81 enquiry and directed to recover the loss caused to Society, from the appellants. Aggrieved over the same, the appellants preferred the above referred Civil Miscellaneous Appeals, before the Principal District Judge, Cuddalore, Cuddalore District / Co-operative Tribunal.

5. The learned Principal District Judge, Cuddalore, after affording an opportunity to the respondents in these Civil Revision Petitions, by order dated 14.11.2013, dismissed the Civil Miscellaneous Appeals filed by the appellants and confirmed the order dated 15.04.2011 passed by the 2<sup>nd</sup> respondent. Aggrieved over the same, the appellants are before this Court with the present Civil Revision Petitions.

6. Today, when the Civil Revision Petitions came up for hearing, the learned counsel appearing for the appellants, mainly would contend that as per the law laid down, along with Section 87 notice, the report relating to the Section 81 enquiry, has to be annexed. But in this case, at the time of serving show cause notice under Section 87 of the Act, the petitioners/appellants have not been served with the enquiry report, which is against the principles of natural justice. In this regard, he relied on the judgment of this Court, in **S.Kumarasamy Vs. The Deputy Registrar of Coop. Societies, Kovilpatti**, reported in 2013 (1) CTC 367, wherein this Court has held as follows:

“4. As far as the first ground is concerned, notice under Section 87 of the Societies Act was issued to the petitioner on 17.04.2007 and the same was served upon him on 20.04.2007. Even though it is mentioned therein that the enquiry report submitted by the Enquiry Officer under Section 81 of the Cooperative Societies Act has been enclosed, in fact, it was not so. It is evident from the fact that the proceeding viz., the enquiry report prepared by the Enquiry Officer is dated 29.07.2006. Both the notices under Sections 87 and 81 and the report under Section 87 of the Act have been produced. When the report under Section 87 of the Act was not served upon the petitioner, the society sent notice under Section 87 of the Act to the petitioner on 29.07.2006 but without enclosing the copy of the enquiry report under Section 81 of the Act. While they sent the notices under Section 87, the report under Section 81 of the Act should also accompany. But only on 17.04.2007 the enquiry report under Section 81 of the Act was

sent to the petitioner along the covering letter which was served upon the petitioner on 20.04.2007. It shows that long after the issue of the notice under Section 87, the report under Section 81 was served upon the petitioner. Since, the petitioner was not afforded with ample opportunities at the time of receipt of notice under Section 87 it has to be observed that the principles of natural justice have been violated which would vitiate the entire proceedings.”

7. In support of his above contention, learned counsel for the petitioners/appellants has further relied on the decision of this Court pronounced on 20.11.2017 in CRP (NPD) No.645 of 2012 [*K.Rathinam Vs. The Deputy Registrar of Co-operative Societies, (Housing) Vellore & 2 others*]. Learned counsel submitted that this Court while allowing the Civil Revision petition, has considered paragraph No.9 of the judgment of this Court in (1999) 3 MLJ 310 (*M.Sambandam Vs. The Deputy Registrar (Credit) Cooperative Societies, Mylapore, Madras and others*) and observed as under:

9. Coming to the next aspect, it is stated that except the show-cause notice the petitioner was not provided with the claim made by the first respondent and the report of the enquiry Officer. In this regard, it is relevant to mention that if any surcharge proceedings is initiated under Section 71 of the Act the same has to be done in accordance with the said provision. The second proviso of Section 71(1) makes it clear that, "No order shall be passed against any person referred to in this sub-section unless to person concerned has been given an opportunity of making

his representations."

The said provision makes it clear that if any proceedings is initiated under Section 71, before passing final order, the person concerned must be given an opportunity to put forth his claim. In our case, even though an enquiry report has not been furnished to the petitioner. The said position is clear even from the order of the third respondent. In the light of second proviso to Section 71(1) in the absence of proof for furnishing copy of the enquiry report further action taken by the first respondent, in pursuance of the enquiry report cannot be sustained on the principles of violation of statutory provision as well as natural justice. Accordingly, I sustain the contention made by the learned counsel appearing for the petitioner"

8. So, the principle set out in the above judgments, would reveals the fact that if the petitioners/appellants were not afforded with ample opportunities, at the time of receipt of notice under Section 87 of the Act, it has to be taken into account that the principles of natural justice has been violated, which ultimately vitiates the entire proceedings. Therefore, in the said circumstances, the issue that has to be decided by this Court, is

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whether the petitioner/ appellants have been provided with ample opportunities at the time of receipt of notice under Section 87 of the Act or not.

9. Now, on going through the letter dated 11.11.2019, sent by the 2<sup>nd</sup> respondent to the learned Special Government Pleader, it was stated that before closing the proceedings initiated under Section 87 of the Act, Mr.Thirumavalavan, Assistant Secretary [appellant in CMA No.42 of 2011] and Mr.Rajamanimaran, Junior Assistant [appellant in CMA No.43 of 2011] submitted applications, seeking copy of the enquiry report and other records, pertaining to Section 81 enquiry. It was further stated that during the time of enquiry, both the above said petitioners/appellants, have made endorsement that for submitting their defence, sufficient opportunity was given to them.

10. Though, it was stated by the respondents that the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners were provided with sufficient opportunities, for raising, appropriate defence before the 2<sup>nd</sup> respondent, the same was not raised before the Co-operative Tribunal-cum-Principal District Court, Cuddalore. Moreover, the letter dated 11.11.2019 sent by the 2<sup>nd</sup> respondent to the learned Special Government Pleader, is not exhibited during the time of

enquiry or at the time when the appeal was decided. So, it is appropriate to raise the ground now raised before this Court, before the Co-operative Tribunal-cum-Principal District Court, Cuddalore.

11. In the absence of any material to show that the petitioners were served with Section 81 enquiry report, this Court cannot decide these Civil Revision Petitions in favour of the respondents. To know about the said crucial aspect, perusal of the records relating to Section 81, Section 87 enquiry, is necessary. Further, it is necessary for the petitioners to raise the sole ground now raised before this Court before the tribunal also.

12. Therefore, this Court is of the considered view that it is appropriate to set aside the orders impugned herein and to remit the matter to the Co-operative Tribunal-cum-Principal District Court, Cuddalore, for considering the case of the petitioners in appropriate manner, after verifying the fact that sufficient opportunity was provided to the petitioners before passing the orders.

13. Accordingly, orders dated 14.11.2013 made in CMA (CS) Nos.41, 42 & 43 of 2011, on the file of the learned Principal District Judge, Cuddalore, are set aside and matter is remitted to the Co-operative Tribunal-cum-Principal District Court, Cuddalore, for fresh consideration, as

stated above. The Civil Revision Petitions are allowed. No Costs.  
Consequently, the connected Miscellaneous Petitions are closed.

04.12.2019

Speaking/Non-speaking order  
Index: Yes/No  
Internet: Yes

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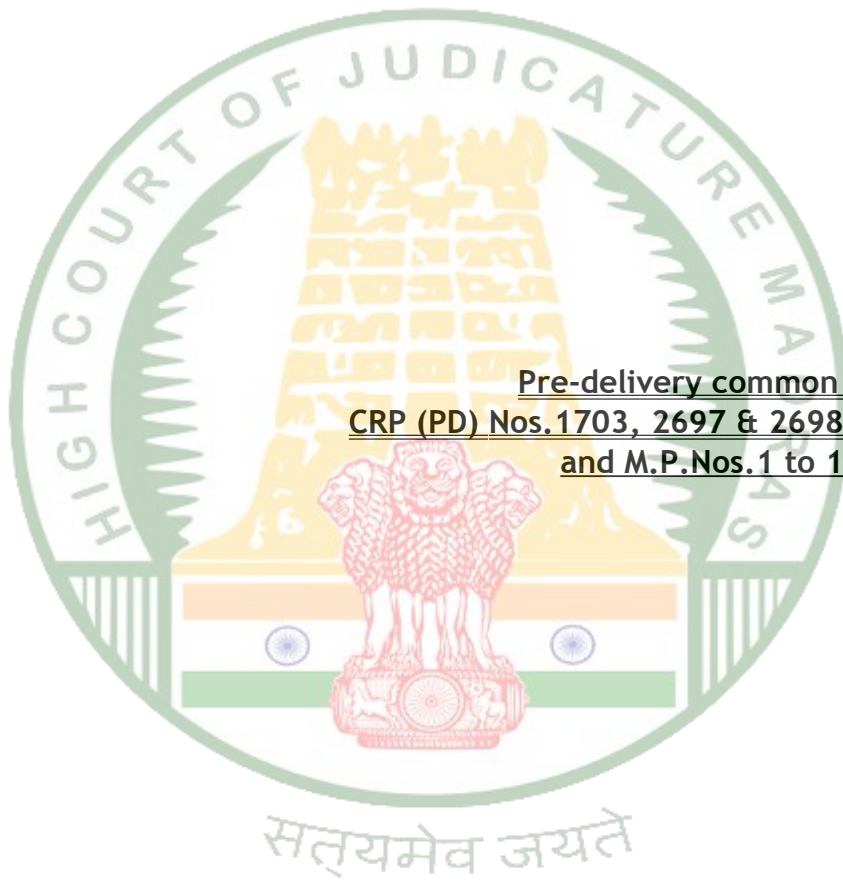
To  
The Principal District Judge, Cuddalore



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R.PONGIAPPAN, J.,

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Pre-delivery common order in  
CRP (PD) Nos.1703, 2697 & 2698 of 2014  
and M.P.Nos.1 to 1 of 2014

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