



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2019
(Reserved on 25.03.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.1622 of 2009

Rajarajan Co-operative Building Society,
Rep. by its Secretary,
Rajappa Nagar,
Thanjavur.

... Petitioner/1st Respondent

vs.

1) S.Rajavelu

... 1st Respondent/Appellant

2) Regional Deputy Registrar, (Housing Society),
Co-operative Housing Societies,
Daniel Thomas Nagar,
Thanjavur.

... 2nd Respondent/2nd Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in CMA.No.80/2005 dated 22.08.2005 on the file of Principal District Court, Thanjavur, reversing and setting aside the order passed by the Regional Deputy Registrar, Housing Society, Daniel Thomas Nagar, Thanjavur, in reference Na.Ka.No.465/89/Sa Pa dated 15.09.2000.

For Petitioner : Mr.V.K.Vijayaragavan

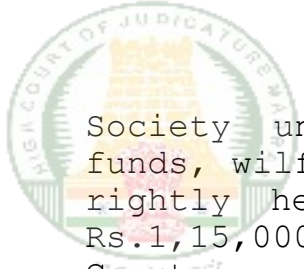
For R1 : Mr..R.Venkatesan

For R2 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

The Regional Deputy Director, Housing Society (Thanjavur) in the proceedings Na.Ka.No.465/89/Sa Pa, dated 15.09.2000, directed the appellant herein to pay a sum of Rs.1,15,500/- to the Society with 17% interest. This order was under challenge by the 1st respondent in CMA.No.80/2005 on the file of the Principal District Court, Thanjavur and the said Court by the order dated 22.08.2005 set aside the impugned order. Challenging the same, the Co-operative Society has filed this revision petition.

2.The main grounds raised by the petitioner is that the 1st respondent was guilty of commissions and omissions and has put the



Society under loss through misappropriation, misapplication of funds, wilful negligence and criminal breach of trust and therefore, rightly he was saddled with the responsibility of payment of Rs.1,15,000/- and it should not have been set aside by the District Court.

WEB COPY

2.1.The specific allegation against the 1st respondent is that he paid brokerage commission to the extent of Rs.28,500/- to one Deivanayagam for Senthamil Nagar layout and a sum of Rs.87,000/- to one Krishnamurthy for Sri Nagar layout. These payment totalling to Rs.1,15,000/- is claimed to be the loss to the Society and it is claimed by the 1st respondent that neither it is a loss nor he is responsible for the same even assuming it to be a loss.

3.Therefore, it is necessary to consider the rival contentions of the parties apart from the reasons given by the learned District Judge in setting aside the impugned order.

4.Learned counsel for the 1st respondent would submit that proceedings have been initiated by the petitioner based on the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, but copy of the report has not been furnished to the 1st respondent. This contention is well founded and principles of natural justice require that copy of the report should have been furnished to the 1st respondent, when action has been initiated against him based on the report. In order to effectively defend the case against him, the copy of the report is essential.

4.1.The next contention of the 1st respondent is that proceedings initiated under Section 87(1) of the Tamil Nadu Co-operative Societies Act, should have been completed within the original period of six months or extended period of another six months and therefore, the proceedings which was not completed within the said period, is barred by limitation. This aspect has been considered by the learned District Judge. The learned District Judge pointed out that the proceedings have been initiated on 18.01.1999 and it should have been completed on or before 18.07.1999 and at least after obtaining permission, it should have been completed on or before 18.01.2000. The extension has been obtained only on 19.05.2000 and it was not even obtained before the expiry of six months namely, on or before 18.07.1999. The second extension has been sought for only on 29.05.2000 and not before 18.01.2000.

5.Relying upon the decision reported in 2000 (II) CTC 659, T.V.Ekambaram and two others vs. Co-operative Tribunal cum District Judge, Madurai, the District Court has held that the proceedings are barred by limitation.

6.The learned counsel for the petitioner has relied upon the Division Bench judgment of this Court reported in (2008) 8 MLJ 231 (S.V.K.Sahasramam vs. Deputy Registrar of Co-operative Societies, Thiruvannamalai Circle). This decision is not with reference to the



proceedings taken under Section 87 of the Tamil Nadu Co-operative Societies Act, but it is pertaining to validity of belated enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act. Therefore, the finding of the learned District Judge on the plea of limitation is also justified.

WEB COPY

6.1. The next contention raised by the petitioner is that payment of Rs.1,15,000/- by the 1st respondent as brokerage commission, is unauthorised payment and therefore, the 1st respondent is liable to compensate the same to the Society. Learned counsel for the 1st respondent would point out that the 1st respondent has alleged oral permission from the Registrar (Housing) for payment of 2% of the sale amount as commission and thereafter, the communication was sent to Deputy Registrar, Cuddalore on 20.04.1996. Thereafter, the Deputy Registrar, by the proceedings in Na.Ka.No.1894/1996 dated 30.04.1996, recommended payment of 1 to ½% of payment of commission and thereafter, there was a general body resolution authorising payment of commission on 01.08.1996 and therefore, the payment is only an authorised payment. When the 1st respondent has pointed out certain proceedings with specific date, it is the duty of the petitioner to have produced those orders or the entire files to show that no such authorisation was given to the 1st respondent and that is not done. Therefore, the logical inference is that the petitioner should have been permitted to pay the commission and therefore, it cannot be branded as unauthorised payment.

7. Learned counsel for the 1st respondent relied upon the communication dated 17.01.2002 sent by the Secretary of the Society to the Regional Deputy Registrar(Housing), Thanjavur, whereunder, there was a submission that there is every chance of the Society getting profit of Rs.1,85,372/-. It is pointed out that there is no loss to the Society and despite the court asking for details on the report, the Society has not produced any further details and therefore, the contention of the society that it was put into loss must be incorrect. The copy of the letter dated 17.01.2002 is produced before this Court, but no explanation has been offered in respect of that letter which states that the profit to the Society in respect of the transaction would be Rs.1,85,372/-. Under the circumstances, the order passed by the District Judge cannot be faulted with and hence the revision petition is dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

1) The Principal District Judge,
Thanjavur.

2) The Regional Deputy Registrar,
Housing Society,
Daniel Thomas Nagar,
Thanjavur.

+1 CC to M/s.SPL GP (SR-78852[F] dated 31/07/2019)

CRP (NPD) (MD) No.1622 of 2009
30.07.2019

bala

JMN (09.08.2019) 4P : 4C