



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.09.2019

DELIVERED ON : 15.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(NPD) (MD)No.979 of 2014

and

M.P.(MD)No.1 of 2014

1.The Deputy Registrar of Co-operative Societies,
Pattukottai,
Thanjavur.

2.The Special Officer,
T-878, Thanjavur Consumer Co-operative,
Wholesale Stores Limited,
Thanjavur.

.. Petitioners/Respondents

Vs.

D.Rajamamanickam

.. Respondent/Appellant

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order passed in C.M.A.No.37 of 2005 by the Principal District Court cum Co-operative Tribunal, Thanjavur dated 23.07.2013 and allow the Civil Revision Petition.

For Petitioners : Mr.R.Velmurugan

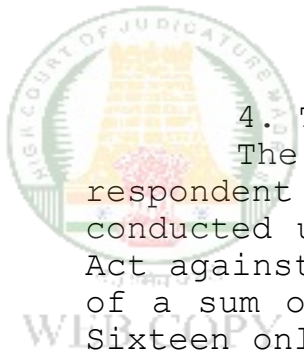
For Respondent : Mr.V.Chandrasekar

ORDER

Heard the learned counsel on either side.

2. This petition has been filed to set aside the order passed in C.M.A.No.37 of 2005 by the learned Principal District Court cum Co-operative Tribunal, Thanjavur dated 23.07.2013.

3. The Revision petitioners herein are the respondents and the respondent herein is the appellant in C.M.A.No.37 of 2005.



4. The case of the second revision petitioner is as follows:-
The respondent herein was working as a Manager in the second respondent Society. Some defects were noticed and enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act against the respondent and one Senthilkumar. There was a deficit of a sum of Rs.61,616/- (Rupees Sixty One Thousand Six Hundred and Sixteen only) during the year 1994-1995 and that the Enquiry Officer came to the conclusion that the Manager/respondent herein as well as the agent of the Manager one Senthilkumar were responsible for the loss suffered by the Society and he gave a report dated 12.10.2001 and the amount is ordered to be recovered from the respondent and Senthilkumar together with interest at the rate of 15.5 % per annum. On the basis of the enquiry report, the Deputy Registrar of Co-operative Societies after getting statements from the respondent and Senthilkumar, came to a conclusion that Senthilkumar was not an employee of the Society and he was not entrusted with the Administration of the Organisation or Management of the Society exonerated Senthilkumar from the charges and fixed the liability upon the respondent. After deducting the payment already made, he found the respondent liable for a sum of Rs.34,565/- (Rupees Thirty Four Thousand Five Hundred and Sixty Five Only) and passed an order of recovery from the respondent with penal interest.

5. Aggrieved by that surcharge proceedings, the respondent preferred a appeal before the learned Principal District Judge cum Co-operative Tribunal, Thanjavur, on the following grounds:-

"1. The Impugned order is liable to be set aside as it is barred by limitation.

2.The impugned order is liable to be set aside as the enquiry u/s.81 of the Act is also barred by limitation.

3. The impugned order is liable to be aside on the ground that the copy of the enquiry report was not furnished to the appellant.

4. Having, come to a conclusion that a sum of Rs.22,092/- was omitted, the Deputy Registrar of Co-operative Societies ought to have exonerated the appellant.

5. The Deputy Registrar of Co-operative Societies had failed to take into account of the amount paid by the appellant on 07.12.1994 a sum of Rs.22,818/- on 04.01.1995 a sum of Rs.19,670/-.

6. In any event, the order of the Deputy Registrar is liable to be set aside."

6. The Trial Court framed the following issues:-

" 1) Whether the appellant has made the Society to suffer loss to the extent of Rs.61,616/-?



2) Whether the reason given by the appellant for non-production of the documents before the lower forum is sufficient to accept before this Court?

3) Whether the enquiry report u/s 81 of the Act is barred by limitation?

4) Whether the surcharge order passed by the first respondent viz., the Deputy Registrar of Co-operative Societies, Pattukottai is sustainable in law? "

7. The Appellate Court after hearing both sides set aside the order of the Deputy Registrar of Co-operative Societies, Pattukottai. Against the order, the petitioners herein has come forward with this revision petition.

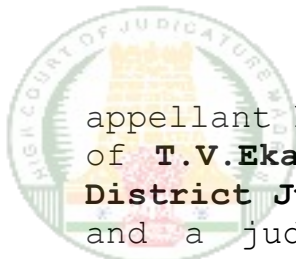
8. The case of the revision petitioner herein is as follows:-

The Lower Court failed to consider the show cause notice issued to the respondent and only after getting his explanation, enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, was initiated and only after enquiry, the Enquiry Officer fixed the liability on the respondent and that the respondent had given a statement admitting his liability. The respondent was found guilty and was convicted by the Criminal Court. The Lower Court even though had accepted that the second revision petitioner Society has proved the liability of the respondent, allowed the appeal on the ground that the enquiry was not completed within a period of limitation. Hence, the order of the Lower Court is contrary to law.

9. On the side of the appellant it is stated that the period of limitation need not be considered and considering the period of limitation is not mandatory. A judgment passed in the case of **S.V.K Sahasramam Vs. Deputy Registrar of Co-operative Societies** reported in (2008) 8 MLJ 231 is cited.

" Expression used in a Section is mandatory or not has to be decided on various factors - Mere expression of the word "shall" alone is not decisive of the matter - Enquiry under Section 81 of the Act is an enquiry in public interest-Cannot be compared to a departmental or individual enquiry - To hold that such an enquiry that has been continued beyond the time limit is bad would caused great injustice - Enquiry report submitted beyond the prescribed period can not be said unsustainable - Writ appeal dismissed."

10. On the side of the respondent, it is stated that the enquiry report under Section 81 of the Act is barred by limitation and the entire proceedings is to be set aside. On the side of the respondent, it is stated that considering the question of limitation is mandatory and the criminal proceedings also was over and that the balance amount was also paid by means of a challon and that the



appellant has not suffered any loss. The judgment passed in the case of **T.V.Ekambaram and two others Vs. The Co-operative Tribunal cum District Judge, Madurai and two others** reported in 2000 (II) CTC 659 and a judgment passed in the case of **P.Elias Vs. The Special Officer, Kumari District Tailoring Women Development Cottage Co-operative Society Ltd.,** reported in 2011 (2) CWC 487 and a judgment passed in the case of **Gabriel Vs. The Deputy Registrar (Housing) Cuddalore and another** reported in 2003 3 CTC 23 were cited.

11.The Trial Court concluded that the enquiry report was not filed within the stipulated time and the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act was barred by limitation.

12.The factum of the enquiry under Section 81 of the Act is not denied by the appellants. How the surcharge proceedings is not affected by limitation is not proved by the appellant. Hence, there is nothing wrong in the order of the trial Court in deciding that the proceedings is barred under limitation.

13.The claim of the respondent is that the entire amount was already paid and there is no loss to the appellant. This contention is not denied by the appellant. It is seen that the criminal proceedings was over. Hence, it is decided that there is no loss to the appellant.

14.In the above circumstances, there is no reason sufficient enough to interfere in the order of the lower Court and this Civil Revision Petition is dismissed by Confirming the order of the Trial Court in C.M.A.No.37 of 2005 on the file of the learned Principal District Court cum Co-operative Tribunal, Thanjavur. No Costs. Consequently, M.P.(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1. The Principal District Court cum Co-operative Tribunal,
Thanjavur.



+1 CC to M/s.R.VELMURUGAN, Advocate (SR-98644[F] dated 15/11/2019)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-99269[F] dated 19/11/2019)

WEB COPY

C.R.P. (NPD) (MD) No. 979 of 2014

and

M.P. (MD) No. 1 of 2014

15.11.2019

KK/SAR/05.12.2019/5P-4C/