

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P. (NPD) .No.3819 of 2012

Sampath,
S/o.Varatha Reddiar,
Panchavelikuppam,
Madiyanur Post,
Ulundurpet Taluk, Villupuram.

...Petitioner

Vs

The Deputy Registrar of Cooperative Societies,
Thirukoilur.

...Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree in CMA (CS) No.23 of 2010 dated 2nd day of August 2012, on the file of the Principal District Judge, Villupuram in confirming the order in Na.Ka.No.3415 of 2001 Sa.Pa. Dated 30.04.2002, on the file of the Deputy Registrar of Cooperative Societies, Thirukoilur.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.L.P.Shanmugasundaram SGP

ORDER

This civil revision petition has been filed against the judgment and decree in CMA (CS) No.23 of 2010 dated 02.08.2012, on the file of the Principal District Judge, Villupuram in confirming the order in Na.Ka.No.3415 of 2001 Sa.Pa. Dated 30.04.2002, on the file of the Deputy Registrar of Cooperative Societies, Thirukoilur.

2. The case of the petitioner is that the respondent initiated surcharge proceedings against the petitioner under Section 87(1) of the Tamil Nadu Cooperative Societies Act, 1983 and conducted an enquiry. In the said enquiry, the respondent passed an order in surcharge proceedings in Na.Ka.No.3415 of 2001 Sa.Pa. on 30.04.2002, on the file of the Sub Registrar of Cooperative Societies, Thirukoilur, directing the petitioner to pay a sum of Rs.14,25,470.95/-, from the date of loss to the Society and till the date of realization, with 18% interest. The

petitioner challenged the said order passed by the respondent, filed an appeal before the appellate Tribunal, the Principal District Judge, Villupuram in C.M.A.(CS) No.23 of 2010. The learned Principal District Judge, after hearing the arguments, dismissed the appeal and confirmed the order passed by the respondent herein in his proceedings dated 30.04.2002. Challenging the said order passed by the appellate Tribunal, the petitioner is before this Court by way of this revision petition.

3. The learned counsel appearing for the petitioner would submit that the respondent has wrongly initiated the proceedings against the petitioner under Section 87(1) of the Cooperative Societies Act. The petitioner is only a borrower and mortgaged his immovable property and he also paid some of the installments. If at all not paying any of the installment, the respondent can initiate the recovery proceedings and can recover the same in the manner known to law. But, he has initiated the surcharge proceedings under Section 87 of the Cooperative Societies Act based on the report under Section 81 of the Act, as if the petitioner misappropriated the funds. The Deputy Registrar as well as the appellate Court failed to understand the fact that the surcharge proceedings initiated under Section 87 for the default of the loan is unknown to law. Even though the Deputy Registrar initiated the said proceedings, whereas the appellate Tribunal also failed to appreciate the facts and simply endorsed the view of the Deputy Registrar, without applying his mind. Therefore, the order has to be set aside on its scope.

4. Further, the learned counsel appearing for the petitioner would submit that the copy of Section 81 enquiry report has not been furnished to the petitioner. The petitioner also after receiving the summons, made a representation several times to furnish the copy of the Section 81 report and also the other relevant documents to enable him to defend the case. Despite several representation made by the petitioner, the respondent has not furnished the copy of any of the document and proceeded ex parte and passed the order even without giving any reason. Therefore, the order passed by the respondent is a non-speaking order.

5. Further, the learned counsel for the petitioner would submit that the interest awarded by the respondent is too high. The petitioner is liable to pay only 6% interest, during pendency of the proceedings and subsequent proceedings. The enquiry under Section 81 should have been completed within six months and the enquiry report should have been filed within six months and if not possible, they should get the extension of time and within the extended time, they should have completed the enquiry and filed the report. The respondent neither completed the enquiry

within the stipulated time and filed the report and not even obtained extension of time and simply passed the order. Therefore, the order passed by the respondent is liable to be set aside. The appellate Tribunal has not re-appreciated the materials independently and simply dismissed the appeal by endorsing the view of the respondent. Therefore, it warrants interference of this Court. In support of his submission, he placed reliance on the judgment of this Court in the case of A.Arumugam Vs. Deputy Registrar of Co-Op. Societies in C.R.P.No.905 of 1997.

6. The learned counsel appearing for the respondent would submit that as far as filing of the enquiry report within the stipulated time is concerned, since he could not complete the enquiry within the stipulated time of six months, he obtained extension of time and also placed the proceedings dated 12.03.2002 in Na.Ka.No.11074 of 2001, Sa.Pa. and therefore, the contention of the learned counsel for the petitioner that the report filed beyond the statutory period is not valid, is not acceptable. Further he would submit that as far as initiating proceedings under Section 87 (1) is concerned, the petitioner along with one Subramanian, the President of the Cooperative Societies and the Senior Clerk one Ramamoorthy, misappropriated the funds of the Society and they made false claim and they caused loss to the Society. Therefore, the enquiry under Section 81 was initiated and based on the report filed under Section 81 of the Cooperative Societies Act and the surcharge proceedings was initiated under Section 87(1). Though several opportunities were given to the petitioner, the petitioner after receiving the summons, he never appeared before the respondent and therefore, even after sufficient opportunity was given, the petitioner neither appeared nor responded. Therefore, the order was passed based on the records. Therefore, the contention of the learned counsel for the petitioner that the surcharge proceedings under Section 87(1) is not maintainable, is not correct.

7. The learned counsel further would submit that if at all the petitioner aggrieved, he should have participated and demonstrated how can under Section 87, the proceedings is not maintainable. Whereas, the petitioner simply after receiving the summons on several occasions, he has not appeared before the authority to made his defence. Therefore, now, he cannot take a stand that proceedings under Section 87 is not valid.

8. The learned counsel further would submit that as far as the interest is concerned, it is a contractual interest and also it is a discretionary power of the authority and the Tribunal and the Society should have taken into reference of 17% interest from the loss caused to the Society and also plus 3% and therefore, in this regard, he placed reliance on the judgments

of this Court in W.P.Nos.14827 to 14829 of 2001, W.P.No.4294 of 2008, W.P.(MD) No.7338 and 7339 of 2012. He also submitted that the petitioner has not appeared and he has not raised any objection before the Deputy Registrar of Cooperative Society. Now, he cannot raise those objections before this Court, for the first time. He has also placed reliance on the judgment of the Court that completing the enquiry and filing enquiry report within six months is concerned, it is only a dictatory and not mandatory. In this regard, he placed reliance on the Judgment of this Court reported in CDJ-2008 MHC 4154. As far as interest is concerned, the petitioner is entitled to claim upto 17% and also plus 3% interest and collecting of 16% realization is not against the law and this Court upheld the order of the Deputy Registrar regarding the interest at 16% per annum till realization is concerned, he placed reliance on the judgment reported in CDJ-1999 MHC 594 and further he has placed reliance on the judgment of this Court in W.P.Nos.33768 & 33769 of 2019 and the same judgment was upheld by the Hon'ble Division Bench of this Court in W.A.Nos.1281 & 1207 of 2016.

9. The learned counsel further submitted that the petitioner has to raise all the grounds before the lower authorities and raising objection before this Court for the first time is not preferable. The Deputy Registrar considered all the facts and passed the order and the Tribunal also rightly dismissed the appeal. Therefore, there is no need to interfere with the matter and the revision has to be dismissed. The order passed by the respondent and the Tribunal has to be confirmed.

10. Heard both sides and perused the records. Admittedly, the respondent initiated the surcharge proceedings under Section 87(1) of the Cooperative Societies Act, against the petitioner and also the Deputy Registrar of Cooperative Societies, after completing the enquiry under Section 87, passed the order, directing the petitioner to pay a sum of Rs.14,25,470.95/- with interest. Challenging the said order, the petitioner filed an appeal in C.M.A.(CS) No.23 of 2010, on the file of the Principal District Judge, Villupuram. The Principal District Judge after perusing the materials, dismissed the appeal and confirmed the order passed by the respondent. Challenging the same, the petitioner is before this Court.

11. Admittedly, the petitioner has raised four objections, one is, the enquiry report under Section 81 of the Cooperative Societies, has not been furnished to the petitioner and opportunity was not given to the petitioner and further, the said enquiry was not completed within a period of six months and the respondent has not even obtained extension of time and therefore, beyond the period of six months, the report filed by the Deputy Registrar is not valid and the interest at the rate

of 18% awarded by the Deputy Registrar is against the law and further he would submit that he has not misappropriated the funds and he has only obtained the loan by mortgaging his property. He is only a borrower of the Bank and therefore, the proceedings under Section 87, is not maintainable.

12. Though the learned counsel for the petitioner vehemently contended that he is only a borrower and the non payment of any installment of the loan to the Society is not misappropriation of the fund, but in this regard, admittedly, the petitioner after receiving the summons, he failed to appear before the Deputy Registrar. Therefore, he should have appeared before the Deputy Registrar and should have made his objections and should have contested the proceedings. As far as the non submission of the report within six months is concerned, as per the decisions of this Court referred supra the submission of the report within six months is only dictatory and not mandatory. Therefore, the contention raised by the learned counsel for the petitioner in this regard is not acceptable. However, factually, though the learned counsel for the respondent submitted that he obtained extension of time and submitted the report, but, however, the learned counsel for the petitioner would submit that the respondent has not filed the report within the extended time and he submitted that if at all the respondent filed the report within the stipulated time, the Registrar of Cooperative Societies could not have asked him to file the report. If he issued the notice if at all report filed, it was stated that the report already filed. Since he has not stated so, it indicated that the report has not been filed.

13. Even if he has not filed the report within the extended time, as per the decisions of this Court stated supra, the non filing of the report within six months, is only dictatory and not mandatory. Merely because of the report is not filed within six months, it is not fatal to the case of the Society. Further, as far as the interest is concerned, though it is a discretionary power of the adjudicating authority, as per the contractual interest, they can award it. As far as the decisions referred by the learned counsel for the respondent regarding his contentions, in all the citations, they have stated that the petitioner has not taken any of the objection in the grounds at the first instance before the Deputy Registrar and the Tribunal and therefore, he cannot raise for the first time before this Court.

14. However, in this case, admittedly, the surcharge proceeding was initiated based on the report under Section 81 of the Cooperative Societies Act. That being the case, first of all, the respondent should have furnished the copy of the Section 81 report to enable the petitioner to defend the case.

Admittedly, in this case, the respondent has not furnished the copy of the Section 81 report. Though in this regard the petitioner even before the Registrar, after receiving summons, he made a submission that he requires the copy of the enquiry report of the Section 81 of the Cooperative Societies Act. Even in the order passed by the respondent, it was quoted that the petitioner was given opportunity to peruse the records in person. But, there is no proof that he sent the copy of the Section 81 report and also there is no evidence to show that Section 81 enquiry report was furnished to the petitioner. Therefore, it violates the natural justice. Though the authority furnished by the respondent counsel in this case that the petitioner has not raised any objection before the lower authorities and Tribunal, whereas, in this case, the petitioner made representation to furnish the copy of the enquiry report and also other copy of the documents. But admittedly, the respondent has neither furnished the Section 81 enquiry report or other documents and the order itself shows that it was passed exparte.

15. Though the respondent sent summons to the petitioner but he has not sent the copy of the section 81 enquiry report. Even though the petitioner sent a representation to furnish copy, he has not furnished. There is no record to show that the respondent sent the copy of the said report except that he asked the petitioner to come and scrutinize the documents. If any ledger or any volume of the document is concerned, it is not possible to send. But the copy of the Section 81 enquiry report, is necessary to be furnished to the petitioner. In this case, It was not furnished. However, the petitioner has raised all his objections before the Tribunal in the grounds of appeal, the Tribunal has failed to consider the same.

16. Further perusal of the entire records shows that even the Deputy Registrar has not stated in his order that what are the original documents he has perused and based on which document, he has arrived at conclusion that the petitioner is liable to pay Rs.14,25,470.95/- jointly or severally along with other delinquents. Therefore, under these circumstances, this Court finds that the citations referred to by the learned counsel for the respondent in this regard are not made applicable to the present case on hand, since the respondent has not given opportunity to the petitioner and not furnished the Section 81 enquiry report and passed the exparte order. Further, he has not even mentioned the list of documents which have been referred by him and based on which document, he arrived at the conclusion. Therefore, under these circumstances, this Court finds that the orders passed by the Tribunal and the Deputy Registrar are liable to be set aside and the petitioner must be given opportunity to peruse the entire records and after perusal

of the records, opportunity should be given to both the parties. The Deputy Registrar, Thirukovilur, is directed to proceed the matter afresh in accordance with law.

17. However, from the typedset of papers, it is seen that, now, the petitioner is in possession of Section 81 enquiry report. The petitioner is directed to appear before the respondent and make a fresh representation on 16.09.2020 what are the documents are required to be perused. On such representation, the respondent is directed to make available to the said documents to the petitioner in the officer of the respondent itself by fixing specified time for perusal.

18. In the result, the judgment passed by the Principal District judge, Villupuram, in CMA (CS) No.23 of 2010, dated 02.08.2012, as well as the order passed by the respondent/Deputy Registrar of Cooperative Societies, Thirukoilur, under Section 87 (1) of the Tamil Nadu Cooperative Societies Act, 1983, dated 30.04.2002 (surcharge proceedings) are set aside and the matter is remitted back to the respondent to conduct enquiry afresh, after giving opportunity to both the parties. However, the petitioner is directed to appear before the respondent on 16.09.2020 and the respondent is directed to show the documents for perusal and if possible, furnish either the xerox or certified copy of the documents to the petitioner. If not possible, allow him to peruse the documents and take notes. The respondent is directed to decide the matter in accordance with law, within a period of 3 months from 16.09.2020.

19. With the above direction, this civil revision petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Villupuram.

2.The Deputy Registrar of Cooperative Societies,
Thirukoilur.

3.The Section Officer, V.R. Section,
High Court, Madras.

+1 cc to M/s.V.Raghavachari, Advocate Sr.No. 27120
+1 cc to M/s.L.P.Shanmugasundaram, Advocate Sr.No. 26937
+1 cc to the Government Pleader, Advocate Sr.No. 26991

C.R.P. (NPD) .No.3819 of 2012

AJS (CO)
RV (21/09/2020)



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