IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25412 of 2015
and M.P.No. 1 of 2015

M. Ravikumar ...Petitioner

-vs-

1. 8994 The Thiruchengode Town Coop Urban Bank Ltd, Thriuchengode, Namakkal District. Rep by its President.

2. The Deputy Registrar of Coop Societies, Thiruchengode, Namakkal District.

3. The Principal District Judge cum Tribunal for Coop Cases, Namakkal.

4. K.P. Arularasu
Deputy Registrar of Co-operatives,
Tiruchengode Circle. .. Respondents

[R4 is suo moto impleaded as per order dated 21.08.2015 by this Court & R4 deleted as per order dated 30.01.2020 in M.P.No. 2 of 2015]

PRAYER: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling of the records relating to the order dated 27.02.2015 of the 3rd respondent made in C.M.A. CS No.18 of 2012 along with the surcharge order No 1168/2011/Sa Pa dated 10.11.2011 of the 2nd respondent quash both the orders.

For Petitioner : Mr.S. Venkataraman
For Respondents: Mr.L.P.Shanmugasundaram [R1]
Ms.T.Girija
Additional Govt. Pleader [R2 & R4]
R3 - Tribunal

ORDER

Heard Mr.S.Venkataraman, learned counsel for petitioner, Mr.L.P. Shanmugasundaram, learned counsel for 1st respondent and Ms.T.Girija, learned Additional Government Pleader for 2nd and 4th respondents.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed by an erstwhile employee of the 1st respondent Co-operative Society challenging an order passed by the 2nd respondent, Surcharge Authority on 10.10.2011 as confirmed by the Principal District Court, Namakkal cum Tribunal for Co-operative cases in CMA CS No. 18 of 2012 dated 27.02.2015.

4. An inspection was ordered to be conducted in to the affairs of the 1st respondent Co-operative Society. The Inspecting Officer submitted a report dated 23.07.2010 reporting that about 364 loans extended by the 1st respondent have become dead as borrowers defaulted in repayment of the loan and the petitioner has not initiated any action for recovery of the loans. Further the Investigating Officer found that only in 74 case proceedings were initiated for recovery of the loan by resorting to Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (for brevity, ‘ the Act’). The petitioner was stated to be solely responsible for not initiating legal action against those 290 loans and he was found to be wilfully negligent and careless in taking legal steps and thereby caused loss to the 2nd respondent Society to the tune of Rs.55,06,387/-. Based on this, the 2nd respondent issued show cause notice dated 18.04.2011 under Section 87 of the Act calling upon the petitioner to state as to why surcharge proceedings should not be initiated against the petitioner and the amount be recovered. The petitioner submitted his explanation dated 28.7.2011. The sum and substance of the petitioner's explanation is that he cannot be held responsible for the non-recovery of the loans, because he was only a Cashier and his duties were time consuming and even as per the report of the Investigating Officer, notice should be issued to all staff of the Society and thereafter, only it could be concluded whether surcharge proceedings has to be initiated only against the petitioner.



5. Apart from that the petitioner referred to the duties and responsibilities assigned to the Cashier and contended that the petitioner cannot be held liable. The petitioner contended that his entire day will be spent in discharging the duties as Cashier and he would not be in a position do any other duties. This explanation was considered by the 2nd respondent and by order dated 10.10.2011, surcharge proceedings were passed restricting the same in respect of the un-recovered loans alone namely 256 loans, the non-recovery of which, has caused loss of Rs.28,29,943/- to the 2nd respondent Society and the petitioner

was directed to repay the same along with interest at the rate of 18% per annum. The petitioner, being aggrieved by such order filed an appeal before the Tribunal of Co-operative cases contending that there is a discrepancy in the amount mentioned in the inspection report and in the surcharge order. Furthermore, inspection report is silent about the period of default and the default as could be seen from the report was for several years, much prior to the petitioner being entrusted with the work of recovering loan amounts, which work was entrusted to the petitioner from 02.09.2004. Furthermore, it is submitted that even as per the Inspection report, the other employees required to be called upon to explain and thereafter, action should have been initiated. During the course of the argument, additional grounds were also raised by the petitioner before the Tribunal. The Tribunal after considering the submissions of the petitioner, who was represented by a counsel as well as the 2nd respondent Society by judgmnet dated 27.02.2015 dismissed the appeal. Aggrieved by the same, the present writ petition has been filed.

6. Heard Mr.S.Venkataraman, learned counsel appearing for the petitioner and Ms.Girija, learned Additional Government Pleader for the respondents.

7. Before this Court ventures to consider the grounds raised in this writ petition as well as the during the course of argument it is to be pointed out that this writ petition though filed under Article 226 of the Constitution of India, has to be treated as a Civil Revision Petition filed under Article 227 of the Constitution of India, in the light of the authorative pronouncement of first bench in the case of E.S. Sundara Mahalingam Vs. Special Tribunal for Co-operative Cases & Ors. [W.A.No.4021 of 2019 dated 22.11.2019. Therefore, though this writ petition has been filed under Article 226 of the Constitution of India is treated as petition under Article 227 of Constitution of India, resultantly, either party aggrieved by this order are not entitled for the remedy of an intra-court appeal.



8. Having held so, the next aspect that has to be seen is with regard to the scope of interference of this Court under Article 227 of the Constitution of India. This power confers supervisory jurisdiction on the High Court over the Courts subordinates to it. The fact finding authority, conducted an investigation under Section 82 of the Act. Based on the report submitted by the Investigating Officer, proceedings were initiated under Section 87 of the Act by the 2nd respondent and

show cause notice was issued. Therefore, the first opportunity granted to the petitioner is at the stage of the issuance of the show cause notice by the 2nd respondent, based on the investigation report submitted under Section 82 of the Act. Therefore, it was well open to the petitioner to raise all contentions available to him both under law as well as on facts.

9. It is argued by Mr.S.Venkataraman, learned counsel for petitioner that no charge was framed, no enquiry was conducted, no documents were exhibited and the entire proceedings are vitiated. On a perusal of the impugned order passed by the 2nd respondent dated 10.10.2011, it is seen that only defence raised by the petitioner is not on the merits of the allegations i.e., he cannot be held responsible because he is only a Cashier. Thus, it is seen that the petitioner did not raise any of the contentions now raised, which are now being raised before this Court for the first time.

10. Furthermore, on a perusal of the grounds of appeal raised before the Tribunal this Court finds no such contentions was ever advanced. Therefore, even assuming that the proper charges were not crystallised, the petitioner was not prejudiced on account of the same as he had cooperated in the enquiry and participated in the proceedings without any demur. Therefore, the petitioner cannot raise any such contentions for the first time in this writ petition. The surcharge authority has clearly brought out the duties and responsibilities, which have been fixed on the petitioner. The petitioner would contend that the circulars, which have been referred by the authority were issued in the year 2001 and 2003 after the petitioner was promoted as Clerk-cum-Cashier.

11. In the considered view of this Court, the correct way to interpret the circulars, which are executive instructions and guidelines to the Officer, is to be taken as an aid to the administration. Admittedly there are sufficient materials to say that the petitioner was not Cashier alone, but Clerk-cum-Cashier and was bound to initiate action for recovery of sticky advances. The authority has cogently brought out as to how no steps were taken for recovery of the loans and on account of not taking action within the time frame prescribed, 256 loans have become unrecoverable as they have become time barred.

12. From the material, which was obtained during the investigation, Surcharge Authority found that the petitioner had deliberately not taken any action for recovery of the loans for a period of 9 years. In other words, Surcharge Authority concluded that not taking action has caused loss to the 2nd

respondent Society and the unrecoverable loans would benefit the borrower. On appeal before the Tribunal, the petitioner argued the matter and set up a case as if a sum of Rs.23,62,003/- has been recovered and in this regard filed a letter as a document. The Tribunal tested the correctness of the said document and found the same to be a forged document, because the General Manager of the 2nd respondent society, who is stated to have signed the letter dated 31.10.2014, on the said date, the General Manager was not available in the station and this was substantiated by producing the Foreign Service Travelling bill for November 2014. Apart from taking into consideration this aspect, the Court also examined as to the wilfulness in the conduct of the petitioner in not taking steps for recovery of the loans.

13. Mr.S.Venkataraman, learned counsel for petitioner referred to a reply received under the RTI Act dated 27.01.2005 and submitted that the authorities have admitted that all loans have been sanctioned in a proper manner. Firstly, from the reply given under RTI dated 27.01.2005 it is not clear that what was the query raised by the petitioner before the Public Information Officer. Apart from that, the communication does not state about any recovery process, but only speaks about sanction of loans. This aspect has been considered by the Tribunal and the Tribunal was right in observing that no credence can be attached to the said reply under RTI Act to substantiate the case of the petitioner. Further the Tribunal after taking note of the duties and responsibilities of a Clerk-cum-Cashier, held that the petitioner is the only person responsibility for the loss, which was caused on account of wilful negligence on the part of the petitioner in not initiating proceedings as against the defaulting borrowers.

14. Thus, in the absence of any perversity in the order passed by the Tribunal, this Court does not find any grounds to interfere with the order. Further, it needs to be pointed out that this Court cannot examine the findings of the Tribunal order that of the 2nd respondent as if it is a 2nd Appellate Court.



15. In the light of the above reasoning, it is held that the petitioner has not made out any ground to interfere with the order passed by the Tribunal confirming the order passed by the 2nd respondent.

In the result, the writ petition fails and stands dismissed. No costs. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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2. The Deputy Registrar of Coop Societies, Thiruchengode, Namakkal District.

3. The Principal District Judge cum Tribunal for Coop Cases, Namakkal.

+1 CC to Mr.S.Venkataraman, Advocate sr 7439.
+1 Cc to The Special Government Pleader sr 7636.

W.P.No.25412 of 2015

NRL(CO)
SP(20/03/2020)