

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2020

PRONOUNCED ON : 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.279 of 2013
and
M.P.No.1 of 2013

- 1.N.Elangovan
 - 2.K.T.Sampath
 - 3.S.Ponnusamy
 - 4.M.K.Govindarajan
 - 5.P.Thamilarasi
 - 6.Velammal
- ...Petitioners/Appellants

Vs.

- 1.The Deputy Registrar of Co-operative Societies,
Krishnagiri,
Krishnagiri District.
 - 2.The Special Officer,
Mottupatti Primary Agricultural Co-operative Bank,
Mottupatty,
Uthangarai Taluk, Krishnagiri District.
 - 3.Gowri
 - 4.K.G.Balakrishnan
- ...Respondents/Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 16.10.2012 made in CMA (C.S).No.35 of 2009 on the file of the Co-operative Cases Appellate Tribunal (Principal District

Court), Krishnagiri, confirming the award of the first respondent in Surchage order No.2/2008/Sa.Pa.1, dated 17.04.2007.

For Petitioners : Mr.G.ArulMurugan
For R1 : Mr.L.P.Shanmuga Sundaram
Special Government Pleader
For R2 : Mr.M.S.Palaniswamy
For R3 : No appearance (refused)
For R4 : Mr.T.Surekha

ORDER

This Civil Revision Petition has been filed against the order passed by the Co-operative Cases Appellate Tribunal (Principal District Court), Krishnagiri, in CMA (C.S).No.35 of 2009, dated 16.10.2012.

2 The first revision petitioner is the President of the Mottupatty Primary Co-operative Bank. The second revision petitioner is the Vice President. The revision petitioners 3 to 6 are the Board of Directors. While the respondents 1 and 2 herein are the Official respondents, the third respondent viz.,Gowri, is the wife of late Gandhi or is the widow of the deceased/Secretary, who held office at the relevant point of time and fourth respondent is one of the clerks associated in the alleged transactions.

3 The revision petitioners along with the Secretary were elected as Office Bearers of the respondent's Society for the period from 01.11.1996 to 25.05.2001. During the said period, they have raised an allegation in respect of the bogus loan, resulted an enquiry under Section VIII of the Tamil Nadu Co-operative Societies Act, 1988,[hereinafter referred to as the Act], which was ordered to be initiated on 13.12.2004. The Enquiry Officer after observing the formalities contemplated under the Act, has filed his report on 07.04.2005. Based upon which, surcharge proceedings were ordered to be taken by the first respondent viz., the Deputy Registrar of Cooperative Society and in the said surcharge proceedings notice was issued on 07.08.2006, containing seven items of charges as detailed therein. After enquiry, only five charges were held to be proved. In respect of charges 5 and 6, the Enquiry Officer has held that only the Secretary and the Clerk are jointly and severally liable to pay the amount, while in respect of other items, along with the Secretary and the petitioners are held to be jointly and severally liable to pay the amount. During the pendency of the surcharge proceedings, the Secretary died and his wife viz. Gowri was impleaded and notice was issued to her. After completion of the said enquiry, surcharge proceedings were ordered

on 17.04.2007, by the first respondent herein. As against the same, the revision petitioners have preferred an appeal in CMA(CS).No.35 of 2009 before the Principle District and Sessions Court, Krishnagiri. It remains to be stated that the respondents 3 and 4 herein have not challenged the said order before the Principal District Court in the above said CMA and the said CMA(CS).No.35 of 2009 was dismissed on 12.08.2009. As against the same, the present Civil Revision Petition has been preferred by the revision petitioners before this Court.

4 Heard both sides and perused the materials placed on record.

5 Taking into consideration the oral and documentary evidence, the learned Principal District Judge has rendered a finding that the loan granted is a bogus loan and it does not come under territorial jurisdiction of the Society. The loans were sanctioned and the loan has also been identified in respect of dead person and the possession certificate alleged to have been issued by the Village Administrative Officer appears to be forged and signature of the Revenue Authorities was also forged and the person, without *bona fide* documents, availed the loan by way of sanction by the Board.

After the official scrutiny, the Board passed a resolution recommending for sanction of the loan and therefore, these persons are held to be jointly and severally liable and also taken note of the statement of the various persons, who deposed that they never availed the loan. The learned Principle District Judge has dismissed the CMA(CS).35 of 2009 and hence, the appeal.

6 The learned counsel appearing for the petitioners would contend that the Secretary and the one of the deceased have not joined as party in the appeal as appellants and hence, they are arrayed as respondents 3 and 4. It is submitted that without prejudice to the contentions that is raised in the grounds of revision, he also stated that after the disposal of that CMA, various payments have been made to the tune of Rs.2,93,133/- and filed the said payment receipts as an additional documents. He also drew my attention to the fact that in criminal proceedings, they have been effected and the appeal has been dismissed consequently, they also deposited Rs.1,00,000/- before the Primary Agricultural Cooperative Bank on 09.05.2018 and Rs.2,00,000/- on 17.04.2018 as per the order passed in C.C.No.81 of 2008. Thus, as on date, Rs.6,00,000/- has already been paid and also drawn my attention to the various decisions of this Court with regard to the settled legal principles of

law in respect of the surcharge proceedings initiated under the Tamil Nadu Co-operative Societies Act.

7 The learned counsel in this regard relied upon the following decisions:

- i)2009 (4) MLJ 992 – *[K.Ajay Kumar Gosh and Others Vs. Tribunal for Co-operative Cases, (District Judge, of Kanyakumari District) Nagercoil and Another]*
- ii)2016 (4) LW 452 –*[S.Ramadevi Vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District and others]*
- iii)2011 (2) CWC 286 – *[AR.Shanmugha Murthy and Another Vs. The Principal District Judge/Co-operative Tribunal, Cuddalore and others]*
- iv)2012 (1) CWC 446 – *[K.Krishnan Vs. The Deputy Registrar of Co-operative Societies and others]*
- v)2013 (4) LW 249 – *[K.Govindasamy Vs. Ms.A.Rajamani and Others]*

8 The learned counsel appearing for the second respondent would contend that sanction of bogus loan is wilful and fraudulent and the enquiry report submitted under Section 83 of the Act would reveal that the person, who was dead, was sanctioned the loan amount and the persons without land are allowed and the

same was sanctioned and hence, it is wilful default whereby, the surcharge proceeding has to be initiated since, the wilful default as defined under the said Act, being satisfied on the factual ground and that does not warrant any interference by this Court.

9 After hearing both the parties and perusing the records, it appears that the Board of Governor viz., Thiupathi had died and his wife was impleaded as legal representative in surcharge proceedings. During the pendency of the Civil Revision Petition, various applications have been made and small amount has to be paid.

10 After perusing the Lower Court order, it is seen that a bogus loan has been issued for landlords viz., eight persons as if they are having own land to an extent of Rs.2,95,000/- and in respect of a dead person, it was shown as a member and a sum of Rs. 32,500/- was given and obtaining forged signature and another Rs.1,19,000/- was granted and lands on which loans that are does not come within the jurisdiction of the Primary Agricultural Cooperative Bank loan have been sanctioned and resulted in loss of revenue to the Society has been made out both in the enquiry proceeding as well as before the learned Principal District Judge in

CMA, which reveals on the above factual position, I am not inclined to entertain this CRP, as the same is devoid of merits and petition is liable to be dismissed. Since, Substantial amount is paid, balance of the amount can be paid by the petitioners at the rate of 6% interest. The rate of interest has been awarded by exercising of powers conferred upon this Court.

11 In the result, the Civil Revision Petition stands dismissed with the above observations and the order passed by the Co-operative Cases Appellate Tribunal (Principal District Court), Krishnagiri, in CMA (C.S).No.35 of 2009, dated 16.10.2012, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.02.2020

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Index : Yes / No
Internet : Yes

To
The Principal District Court, Krishnagiri.

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RMT.TEEKAA RAMAN., J

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Pre-Delivery Order
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