

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.217 of 2013

1.N.P.Jayathilagam (deceased)

2.J.Arun Kumar

3.J.Arun Balaji

.. Petitioners

(Petitioners 2 and 3 brought on record as LRS of the deceased sole petitioner vide order of this Court dated 10.01.2017 made in C.M.P.No.5141 of 2016 in C.R.P.(NPD). No.217 of 2013)

Vs.

1.The Special Officer,
KK 252, Veeramalai Primary Agricultural
Co-op. Bank, Veeramalai Village & Post,
Pochampalli Taluk, Krishnagiri District.

2.The Deputy Registrar of Co-op. Societies,
Krishnagiri – 635 001.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the decree and judgment dated 12.04.2012 in C.M.A.(CS).No.16 of 2009 passed by the Learned Principal District Judge at Krishnagiri.

For Petitioners : Mr.T.Sundaravadanan
For R1 : Mr.Shivakumar
for Mr.M.S.Palanisamy
For R2 : Ms.J.Girija
Additional Government Pleader

ORDER

The matter is heard through Video Conferencing.

2.This Civil Revision Petition is filed to set aside the judgment and decree dated 12.04.2012 made in C.M.A.(CS).No.16 of 2009 on the file of the Principal District Court, Krishnagiri.

3.The 1st petitioner is the 9th respondent in surcharge proceedings. Totally 8 charges were initiated in the surcharge proceedings against 10 persons. Out of 8 charges, 4 charges were levelled against the 1st petitioner along with others. The 2nd respondent who is the Deputy Registrar of the Co-operative Societies/Enquiring Officer, held that charges levelled against the petitioner and others were proved and directed them to pay the amounts mentioned therein by the surcharge order dated 24.07.2008. Against the said order dated 24.07.2008, the petitioner has filed C.M.A.(CS).No.16 of 2009 before the Principal District Court, Krishnagiri, (District Co-operative Cases

Appellate Tribunal). The Principal District Judge by the order dated 12.04.2012, dismissed the appeal confirming the surcharge order dated 24.07.2008.

4. Against the said order of dismissal dated 12.04.2012 made in C.M.A.(CS).No.16 of 2009, the 1st petitioner has come out with the present Civil Revision petition. Pending Civil Revision Petition, the 1st petitioner died and therefore his legal heirs are impleaded as petitioners 2 and 3 in the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners contended that the 1st petitioner is the Field Officer of the Dharmapuri District Central Co-operative Bank and he is not an employee of the 1st respondent Bank. The duty of the 1st petitioner is to sanction the loan only after the loan application is verified and forwarded by the Secretary and Circle Supervisor. The 2nd respondent did not conduct the surcharge proceedings properly and he has violated the principles of natural justice. The 2nd respondent did not examine any witness to prove the charges against the 1st petitioner and did not give any opportunity to the 1st petitioner to cross examine them in the surcharge proceedings. The 2nd respondent also did not permit the 1st petitioner to

examine the witness to prove his innocence and prayed for setting aside the judgment dated 12.04.2012 made in C.M.A.(CS).No.16 of 2009 passed by the learned Principal District Judge, Krishnagiri, (District Co-operative Cases Appellate Tribunal) and the Surcharge Order passed by the 2nd respondent dated 24.07.2008.

6.Per contra, Mr.Shivakumar, learned counsel representing Mr.M.S.Palanisamy, counsel appearing for the 1st respondent and Ms.J.Girija, Additional Government Pleader appearing for the 2nd respondent separately contended that the 1st petitioner is Field Manager of the 1st respondent Bank and duties and responsibilities are allotted to the 1st petitioner. It is the duty of the 1st petitioner to verify the correctness and genuineness of the loan application and then only loan can be sanctioned. The petitioner deliberately did not perform his duty and colluded with other employees, misappropriated the amounts and caused loss to the 1st respondent Bank. In Section 81 enquiry, it was found that 1st petitioner and others caused loss to the 1st respondent Bank. In the surcharge proceedings initiated, the petitioner was given opportunity to cross examine the witness. The 2nd respondent conducted surcharge enquiry in a fair and proper manner following the principles of natural justice. The learned Judge considering all the materials, rejected the

contention of the 1st petitioner and dismissed the appeal. There is no reason to interfere with the order of the learned Judge and surcharge order of the 2nd respondent and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 1st respondent and the learned Additional Government Pleader appearing for the 2nd respondent and perused the entire materials on record.

8. In the present Civil Revision Petition, both the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 1st respondent made various submissions for allowing the Civil Revision Petition and for dismissing the Civil Revision Petition. The main contention of the learned counsel appearing for the petitioners is that the 1st petitioner was not given any opportunity to let in evidence to prove his innocence. This contention was denied by the learned counsel appearing for the respondents and contended that the 1st petitioner was given opportunity to cross examine the witness and he did not utilize the opportunity given to let in evidence. I have carefully considered the order of the 2nd respondent dated 24.07.2008 in the surcharge proceedings. In the surcharge order, the 2nd respondent has not

mentioned the witness examined in the surcharge proceedings and their evidence. The 2nd respondent has not given any finding based on the evidence of witness examined before him. In the surcharge proceedings, which is a nature of suit, evidence must be let in to prove each and every charge levelled against the 1st petitioner. The employee must be given an opportunity to cross examine the witness. If the employee did not cross examine any witness, the same must be recorded in the surcharge order. It is the duty of the 2nd respondent in surcharge proceedings to give a finding on the evidence let in and also give reasons for holding the charges proved against the employees.

9. In the present case, in surcharge proceedings, the 2nd respondent has not mentioned the names of witness and evidence let in by the 1st respondent and has not given any specific finding against the 1st petitioner. In the surcharge order of the 2nd respondent, there is no mention about the evidence let in to prove the deliberate negligence on the part of the 1st petitioner. In the surcharge order of the 2nd respondent, there is no mention about the evidence let in by the 1st respondent to prove the act of omission and commission or deliberate negligence on the part of the 1st petitioner. The Tribunal did not take note of the failure on the part of the 2nd respondent to record the evidence, consider the same and give a finding in the surcharge proceedings.

For the above reasons, without deciding the issue on merits, the surcharge proceedings as well as judgments of the Co-operative Tribunal are set aside. The surcharge proceedings is remanded back to the 2nd respondent. The 2nd respondent is directed to give a finding whether petitioners 2 and 3 have inherited any estate of the deceased 1st petitioner. Only if the 1st respondent proves that petitioners 2 and 3 have inherited the estate of deceased 1st petitioner, 2nd respondent can proceed with the surcharge proceedings to consider whether due to wilful negligence and act of omission and commission on the part of the 1st petitioner, the 1st respondent has suffered loss. The 2nd respondent is directed to consider the evidence, if any already let in and fresh evidence, if any to be let in by the 1st respondent and petitioners 2 and 3. The 2nd respondent is directed to give opportunity to the petitioners 2 and 3 to cross examine all the witnesses and also permit the petitioners 2 and 3 to let in evidence on their behalf, if they so desire.

10. With the above directions, the present Civil Revision Petition is allowed. No costs.

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Index : Yes / No

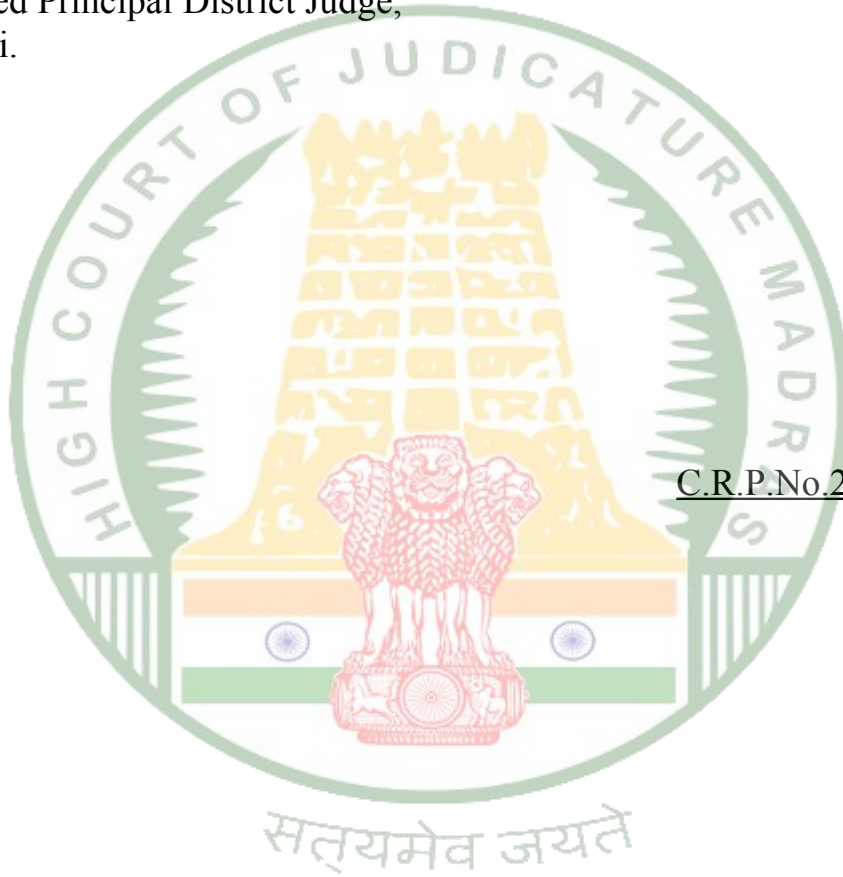
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V.M.VELUMANI, J.

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To

The Learned Principal District Judge,
Krishnagiri.



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