



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.07.2021

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.1099 of 2013

and

M.P. (MD)No.1 of 2013

WEB COPY

- 1.V.Pandiyan
- 2.K.M.Thangaiyan
- 3.A.Balakrishnan
- 4.M.Sappani Board Member (died)
- 5.G.Anbazhagan
- 6.S.Lourdumary
- 7.A.Angammal
- 8.K.Boominathan
- 9.A.Devasagayam
- 10.K.Thangavelu

: Petitioners/Appellants

.. Vs ..

The Deputy Registrar of Cooperative Societies,
Lalgudi,
Trichy District.

: Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition by setting aside the order passed by the learned Principal District Judge, Tiruchirappalli in C.M.A.(CS) No.17 of 2008, dated 18.10.2012.

For Petitioners

: Mr.K.Gurunathan

For Respondent

: Mr.D.Muruganandam

Additional Government Pleader

- - -

ORDER

The above Civil Revision Petition is directed against the order passed by the learned Principal District Judge, Tiruchirappalli in C.M.A.(CS) No.17 of 2008 passed in the appeal under Section 152 (1)(a) of the Tamil Nadu Cooperative Societies Act.

2.Heard the learned Counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondent.

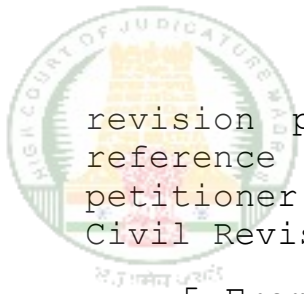
3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:



3.1.The revision petitioners are the Secretary, President, Vice President and members of the Board of Directors of R.766, Kattur Primary Agricultural Cooperative Bank. An enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was ordered pursuant to some financial irregularities noticed in the society. An inspection report was filed indicating that the Secretary by name Pandian, who is the first petitioner in this Civil Revision Petition, made debit entry in the Day Book as if amount was given to one Karuppasamy without any pay-in-slip and debited the amount from the bank's account. It is further found that the first petitioner who is the Secretary of the society received the amount on the self-cheques issued for various amounts on various dates and failed to credit in to the bank account. It is noticed that there was no entry in the vouchers and the day-book and the President put a signature without verifying the accounts. Similarly, in like manner, from the savings account of the society with the Central Cooperative Bank, several amounts have been withdrawn by the Secretary of the society and the amount withdrawn from the account has not been credited. By similar instances, a sum of Rs.2,05,092.50 has been misappropriated. Hence, a surcharge notice was sent to the employees of the bank on 16.09.1999. Since enquiry under Section 87 of the Act could not be concluded within six months, extension of time was obtained and enquiry was completed within the extended time. The Deputy Registrar of Cooperative Societies, after recording a finding that the petitioners failed to discharge their duties as per Sub Rule 25(B)(10) and caused deficiency in the assets of the society by their willful negligence, ordered that all of them are jointly and severely liable to pay the said sum of Rs.2,05,092.50 with interest.

3.2.As against the order of the Deputy Registrar, a Civil Miscellaneous Appeal was filed before the Principal District Court, Tiruchirappalli, under Section 152(1)(a) of the Tamil Nadu Cooperative Societies Act, 1983. The appellate authority dismissed the appeal holding that there is no reason to disagree with the decision of the Deputy Registrar dated 14.09.2000. Aggrieved by the same, the petitioners have preferred the above Civil Revision Petition.

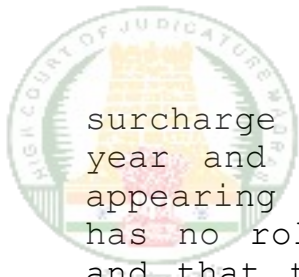
4.The revision petitioners have raised several grounds in the memorandum of grounds. It is to be noted that all the grounds have been raised as if the first petitioner alone is the revision petitioner. Though the first petitioner has withdrawn the amounts and has failed to explain why the amounts were withdrawn from the savings accounts had not been credited nor accounted, *prima facie* the first petitioner, the Secretary of the society, is responsible for the loss caused to the society. However, the order of the Deputy Registrar and the Tribunal fixing responsibility on all the



revision petitioners is not challenged before this Court with reference to the status of petitioners other than the first petitioner. In short, there is no specific ground raised in the Civil Revision Petition on behalf of other petitioners.

5.From the surcharge order passed by the Deputy Registrar dated 14.09.2000, it is seen that amounts have been withdrawn by the Secretary through self-cheques of the society by making fake entries in the account. By five independent instances, a sum of Rs.2,05,092.50 has been misappropriated from the accounts of the society. The first petitioner has admitted that he is responsible for the loss. However, his explanation was to the effect that the Cashier has defrauded the Secretary and President of the society. However, it was not demonstrated to the satisfaction of the Surcharge Officer as to how and in what manner the Cashier could encash the amount without the knowledge of the Secretary and President of the society. It is admitted that the Secretary and President of the society have signed the cheques for withdrawing the amounts from the savings account of the bank maintained with the Central Cooperative Bank. Both of them admitted that they have not verified, whether the amount withdrawn from the Central Cooperative Bank had been credited into the accounts of the cooperative bank. The loss caused to the society on account of the financial irregularity is not disputed. It was found during the enquiry that the amounts encashed through self-cheques were not given credit to the bank account and the Secretary who wrote the vouchers has omitted to make entries in the vouchers corresponding to the cheques that were encashed. When it is admitted that the bank has incurred loss on account of the irresponsible and fraudulent conduct of the Secretary and President of the society, there is nothing wrong in proceeding against the revision petitioners and making them responsible for the deficiency caused to the assets of the society by their willful act and negligence.

6.The learned Counsel appearing for the revision petitioners submitted that the respondent has failed to furnish the enquiry report pursuant to the enquiry conducted under Section 81 of the Tamil Nadu Cooperative Societies Act. The learned Counsel submitted further that the Joint Registrar of Cooperative Societies by his proceedings dated 09.11.1999 disqualified the revision petitioners pointing out the serious financial irregularities and that thereafter, the said order was set aside vide G.O.(D) No.259, Cooperation, Food and Consumer Protection Department, dated 10.08.2000. Since the order of Joint Registrar disqualifying the petitioners was set aside by the Government, the surcharge order passed by the Deputy Registrar is nothing but a colourable exercise of power and without jurisdiction. The learned Counsel appearing for the petitioners submitted that the



surcharge proceedings is time barred as it was completed after one year and two months. It is reiterated by the learned Counsel appearing for the petitioners that the Secretary of the society has no role to play regarding money transactions in the society and that the same was done only by the Cashier who has not been added as a party in the surcharge proceedings dated 14.09.2000. The learned Counsel then submitted that the Secretary of the society was acquitted in the criminal case and that therefore, there is no concrete case against the first petitioner who has been roped in the surcharge proceedings only on probabilities. This Court is unable to appreciate any of the submissions of the learned Counsel appearing for the revision petitioners.

7.First of all, it is admitted that the enquiry was completed within the extended period and hence, there is no scope for accepting the argument that the whole enquiry is vitiated due to lapse of time. Merely because a proceeding of the Joint Registrar for disqualification of the petitioners has been set aside by the Government, the surcharge proceedings cannot be terminated as a consequence. It is to be seen that the Government while setting aside the order disqualifying the Board of Directors found that disqualification was without giving them sufficient opportunity. Hence, the order is only on a technical ground.

8.As per the enquiry report under Section 81 of the Act, specific charges under five heads in relation to misappropriation of the whole funds was initiated against the petitioners. All the petitioners were given opportunity and every one of them participated in the enquiry. The charges are specific. The fact that the amount has been misappropriated and thereby there is deficiency in the assets of the society to the tune of Rs.2 lakhs and odd is not in dispute. The amount has been withdrawn by self-cheques signed by the Secretary of the society. Except pleading that the Cashier has cheated the Secretary and the bank, there is no record or statement of witnesses produced before the Surcharge Officer explaining the modus operandi of the Cashier to misappropriate the funds without the knowledge of the Secretary and President of the society. When the loss caused to the bank was not denied by the revision petitioners in their statements and their duties and responsibilities have been fixed, the contention of the learned Counsel appearing for the petitioners that the petitioners have no role to play, cannot be accepted. The President of the society in his statement has stated that the Secretary alone is responsible for the loss and that on the compulsion of the Secretary, he signed in the account books. The other petitioners including the President and the Board of Directors have no independent grievance while challenging the order of the appellate authority before this Court. The revision petitioners therefore have failed to discharge their duties and



responsibilities as indicated in the rules governing the administration. The Enquiry Officer could not accept the explanation given by the revision petitioners after giving sufficient opportunity to the petitioners. The reasons and the grounds raised by the revision petitioners are not convincing and hence, the petitioners are held liable jointly and severally to make good the loss to the society. The learned Principal District Judge, Tiruchirappalli, has applied his mind to the whole facts and circumstances and records and found no reason to disagree with the findings of the Deputy Registrar. This Court has no reason to interfere with the order of the Tribunal/Appellate Authority. Any error of jurisdiction or irregularity is pointed out. Hence, this Court is of the view that this Civil Revision Petition is devoid of any merits and hence, dismissed. The order of the learned Principal District Judge, Tiruchirappalli, in C.M.A.(CS) No.17 of 2008 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (w)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Principal District Court,
Tiruchirappalli.

2.The Deputy Registrar of Cooperative Societies,
Lalgudi,Trichy District.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-22616[F] dated 15/07/2021)

Order made in
C.R.P. (MD)No.1099 of 2013

14.07.2021

_CN(16.08.2021) 5P 4C