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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.09.2021
DELIVERED ON	07.10.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (PD) (MD) .No.988 of 2021

and

C.M.P (MD) No.5628 of 2021

The Circle Deputy Registrar of Cooperative Societies,
Shanmugapuram,
Palani Circle, Palani,
Dindigul District.

...Petitioner/Respondent

Vs.

S.Kannan

...Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed on the file of the learned Principal District Judge, Dindigul in C.M.A.(CS)No.6 of 2014 dated 23.06.2017 and allow the present Civil Revision Petition.

For Petitioner : Mr.A.Baskaran,
Government Advocate

For Respondent : Mr.R.Saravanan

O R D E R

This Civil Revision Petition has been filed to set aside the order, dated 23.06.2017 in C.M.A.(CS)No.6 of 2014, passed by the learned Principal District Judge, Dindigul.

2.The respondent herein/petitioner has preferred an appeal in C.M.A.(C.S.)No.6 of 2014 on the file of the Principal District Court, Dindigul, against the order, dated 23.12.2013 passed by the Deputy Registrar of Co-operative Societies in Tha.Va.No.3/2013 Sa.Pa., under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

3.After full-fledged trial, the said C.M.A.(CS)No.6 of 2014 was allowed on 23.06.2017 by the learned Principal District Judge, Dindigul. Aggrieved over the same, the revision petitioner is



before this Court.

4. Heard Mr.A.Baskaran, learned Government Advocate appearing for the revision petitioner and perused the material documents available on record.

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5. The learned counsel appearing for the revision petitioner contended that the learned Appellate Judge has failed to consider that, even though there is no provision to re-schedule the scheduled loans and that only after closing the earlier loan by recovering the entire loan amount together with interest, new loan could be issued, but, however without recovering the interest on loan and without closing the same the respondent has issued a fresh loan and thereby caused loss to the tune of Rs.34,047/-. He further submitted that the learned Appellate Judge has failed to consider that the respondent neither recovered Rs.19,466.75 nor initiated legal proceedings which is willful failure in his duties and responsibilities. He further submitted that the lower appellate Court failed to consider that under Section 81 of the Tamil Nadu Co-operative Societies Act, enquiry officer gave a detailed report based on materials on record and the respondent has also admitted his willful negligence.

6. It is seen from the records that the respondent worked as Secretary in the revision petitioner's Society and he retired from service on 31.05.2012. The Deputy Registrar, Palani, has issued a surcharge notice under Section 83 of the Tamil Nadu Co-operative Societies Act, in Na.Ka.No.1684/2012, dated 23.04.2013 alleging that the respondent and four other staffs of the said society had caused total loss of Rs.6,26,926.53P., to the revision petitioner's society in 12 items. The respondent has also submitted his explanation. After conducting enquiry, the revision petitioner has passed the impugned order, dated 23.12.2013 in Tha.Va.No.3/13Sa.Pa., rejecting the objections submitted by the respondent and directed him to pay the amounts claimed along with interest. Aggrieved by the said order, the respondent herein has preferred an appeal in C.M.A.(CS) No.6 of 2014 on the file of the learned Principal District Judge, Dindigul.

7. In the C.M.A.(CS) No.6 of 2014, the lower Appellate Court held as follows:

"At this juncture, it is necessary to refer the subsequent decision of A.S.Dhanapal Vs. The Deputy Registrar of Co-operative Societies, Tirupattur Circle, Tirupattur, Vellore District and another.

Para 10 -12 :

12. Applying the above principle laid down by the Hon'ble Supreme Court in various judgments

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cited supra, if the deliberate negative language employed in the first proviso to Section 87(1) of the Act is analysed in the light of the affirmative language employed in Section 84(1) and second proviso to Section 87(1) of the Act, the intent of the legislature could be perceived that the Legislature has prescribed the time limit only as mandatory".

I respectfully agree with the above said view taken by the learned Single Judge of this Court by elaborately considering the provisos 1 and 2 to Section 87(1) of the Act, coupled with the principles of interpretation of statutes and also referring the decisions rendered by the Division Bench of this Court in S.V.Sahasram's case and other decisions of the Hon'ble Apex Court and ultimately arriving at the conclusion to the effect that the First Proviso to Section 87(1) of the Act as mandatory.

Para 11

II.A similar view was taken by another learned Single Judge of this Court in R.Ganapathy Vs. Deputy Registrar of Co-operative Societies (Housing), Tirunelveli and Another reported in (2009)6 MLJ 1066, holding that First Proviso to Section 87(1) is mandatory and any surcharge proceeding initiated beyond the period of 7 years from the date of the transaction is liable to be quashed.

Para 14

14.Considering the above decisions of this Court coupled with the admitted fact that the surcharge proceedings proposed to be initiated by issuing the impugned notice was issued only in the year 2006 in respect of the transactions said to have taken place in the year 1995 - 96 and the petitioner had retired as early as in the year 1997 and thereby, the impugned notice proposing to initiate proceedings is liable to be quashed, as barred by limitation.

The above case is squarely application to the case on hand. As per the dictum laid down in the above decision, the time limit provided in the 1st proviso to Section 87(1) of Tamil Nadu Co-operative Societies Act, is to be construed as mandatory and not directory. In the present



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case, admittedly show cause notice u/s 87(1) was issued on 29.06.2013. Therefore, any transaction that had taken place prior to 29.06.2006 cannot be reckoned for initiating any action u/s 87 of the said Act. In the case on hand, it is the specific contention of the appellant that except the Items 2, 7 and 8, all other transactions had taken place before 10 years. Though the appellant has raised the said plea specifically, the respondent has not disputed the said factum specifically. As rightly contended by the appellant side, the notice issuing authority and the authority who had passed impugned order have not referred any particulars of the date or period of transactions in any of the items referred and decided. But, on perusing the trial Court file, all the account statements produced are for the period prior to 30.06.2004. As rightly contended by the appellant side, the respondent has not shown any records nor produced any materials to show that the transactions involved in the present case relates to the period within 7 years from the date of show cause notice u/s 87 of Tamil Nadu Co-operative Societies Act. As rightly argued by the learned counsel for the appellant, the respondent in his impugned order has not mentioned the dates or the period of the transactions purposely and wantonly in an attempt to avoid or escape from the plea of limitation contemplated in the proviso u/s 87 of Tamil Nadu Co-operative Societies Act.

Considering the above, this Court has no hesitation to hold that the surcharge proceedings initiated after the expiry of seven years from the date of transactions now under challenge excluding the items 2, 7 and 8 are without jurisdiction and liable to be set aside."

8. Therefore, we have to decide that whether regarding items 2, 7 & 8 the charges against the respondent is proved or not?

9. The respondent has stated that there was no willful negligence on the part of himself. The respondent has admitted that he was working as Secretary. The contention of the appellant is that, only after closing the earlier loan by recovering the entire loan amount together with interest, new loan could be issued. But, however, without receiving the interest on and without closing the



same the respondent has issued fresh loan to the tune of Rs.34,047/-.

10. Further, the respondent has failed to take legal action for recovery of medium term loan. The respondent has also failed to return fertilizers before due date of expiry.

11. But, the case of the respondent is that items 2, 7 & 8 are not recoverable and not loss to the assets of the revision petitioner's Society. There is no doubt it is negligence and not willful negligence.

12. As per Judgment reported in **2002-3-LW 185** in the case of **S. Subramanian Vs. The Deputy Registrar of Co-operative Societies (Housing) Cuddalore and Others.**

Para 12 & 13

"12. In the present case it has to be pointed out that no finding has been recorded by the first respondent or by the third respondent to establish that the deficiency had been caused willfully or deliberately or with a view to cause loss to the assets of the society. Nowhere a finding has been rendered either by the respondent or by the third respondent in their proceedings that the petitioner is guilty of willful negligence or wantonness, nor it has been recorded that omission or commission on the part of the petitioner is deliberate, reckless or callous or loss has been caused deliberately to the assets of the society.

13. In the absence of such a finding, as has been consistently held by this Court, that the petitioner is guilty of willful or deliberate negligence or there is intention to cause loss to the assets of the society, it follows that the impugned surcharge proceedings in so far as the petitioner is concerned are liable to be quashed.

Para 14

".....It is not mere negligence, it must be willful negligence. Further it is not a case of misappropriation even according to the respondents. When the requirements of Section 87 had not been satisfied and when the basic requirement of Section 87 which warrants initiation of surcharge proceedings is not satisfied or established on mere assumptions the appellant cannot be fastened with the liability. It has to be pointed out that neither in the show cause notice, nor in the proceedings of the first or



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third respondent, it has been held that the appellant has acted willfully or wantonly with premeditation with a view to cause loss to the assets of the society. Mere negligence cannot be a ground of surcharge and it must be a willful negligence or intentional negligence and not mere carelessness or intention or inadvertence or a single lapse by oversight".

13.Considering the above, it is very much clear that the question of law is well settled that mere negligence or carelessness is not sufficient to proceed with surcharge and there must be willful negligence or intentional negligence and that there must be a finding recorded by the competent authority that the officer facing surcharge proceedings is guilty of willful or deliberate negligence and there is intention to cause loss to the assets of the society. In the present case, admittedly, there are no averments or allegations for willful negligence or intentional negligence in the show cause notice issued u/s 87 of Tamil Nadu Co-operative Societies Act and the materials produced before the respondent at the enquiry. Moreover, as rightly contended by the appellant side they have nowhere whispered about any willful negligence or intentional negligence on the part of the appellant or that the appellant had caused loss to the assets of the society intentionally and he has not recorded any such findings anywhere in the impugned order.

14.Considering the above and on applying the legal dictum above mentioned, this Court has no other option, but to hold that the absence of any findings that the appellant was guilty of willful or deliberate negligence or there was intention to cause loss to the assets of the society, the impugned surcharge proceedings and subsequent order passed thereon are liable to be set aside.

15.Therefore, the learned Principal District Judge, Dindigul, has rightly allowed the C.M.A.(CS)No.6 of 2014.

16.Finally, this Civil Revision Petition stands dismissed by confirming the order, dated 23.06.2017 in C.M.A.(CS)No.6 of 2014, passed by the learned Principal District Judge, Dindigul. No Costs. Consequently, connected miscellaneous petition is closed.

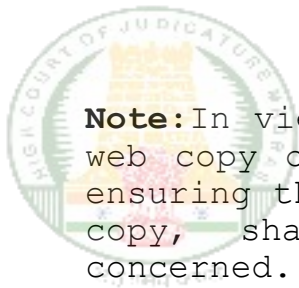
Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)



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To

The Principal District Judge,
Principal District Court,
Dindigul.

+1 CC to M/s.SPL.GP (SR-31771[F] dated 08/10/2021)

+1 CC to M/s.R.SARAVANAN, Advocate (SR-31569[F] dated 07/10/2021)

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07.10.2021

RD(21.10.2021) 7P 4C