



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.10.2021
DELIVERED ON	22.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P(MD)No.1267 of 2021

and

C.M.P. (MD)Nos.7280 & 8237 of 2021

WEB COPY

The President,
M.D.Spl.121, Pasukkaranpatty Primary,
Agricultural Cooperative Credit Society Limited.

... Petitioner/3rd Party/3rd Party

Vs.

1.S.Chinnasamy

... R-1/Appellant/Respondent

2.The Deputy Registrar of Cooperative Societies,
Usilampatti Circle,
Thirumangalam Taluk,
Madurai District.

... R-2/Respondent/Suo-mottu

PRAYER: Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order, dated 01.12.2018 passed in C.M.A.(CS)No.28 of 2011 on the file of the learned Principal District Judge, Madurai, reversing the Surcharge order passed in Tha.Va.2/2010 Sa.Pa/Na.Ka 1437/09/Sa/P dated 28.07.2010 on the file of the learned Deputy Registrar of Cooperative Society, Usilampatti Circle, Thirumangalam, and set aside the same as illegal.

For Petitioner : Mr.R.R.Kannan
For R-1 : Mr.V.R.Venkatesan

O R D E R

The Revision petitioner/President, M.D.Spl.121, Pasukkaranpatty Primary, Agricultural Cooperative Credit Society Limited, has preferred this Civil Revision Petition to set aside the impugned fair and decreetal order, dated 01.12.2018 in C.M.A. (CS)No.28 of 2011 passed by the learned Principal District Judge, Madurai.

2.The 1st respondent herein has filed C.M.A.(CS)No.28 of 2011 under Section 152(1) of the Tamil Nadu Co-operative Societies Act, on the file of the learned Principal District Judge, Madurai, to set aside the Surcharge order in Tha.Va.2/2010 Sa.Pa/Na.Ka 1437/09/Sa/P, dated 28.07.2010 passed by the 2nd respondent herein, for recovery of Rs.30,32,283/-with 18% interest and the same was allowed. Aggrieved over the same, the revision petitioner is before this Court.



3.Heard Mr.R.R.Kannan, learned counsel appearing for the revision petitioner and Mr.V.R.Venkatesan, learned counsel appearing for the 1st respondent. Perused the material documents available on record.

4.The learned counsel appearing for the revision petitioner submitted that the Court below ought to have dismissed the appeal file to set aside the Surcharge order passed by the 2nd respondent herein in Surcharge No.2/2010 Sa.Pa/Na.Ka 1437/09/Sa/P, dated 28.07.2010, for Rs.30,32,283/-with 18% interest, since the 1st respondent has swindled the above amount from the Petitioner's society. The 1st respondent has swindled a sum of Rs.30,32,283/- while he was working as Secretary of the Petitioner Society. It is the public money and hence in order to protect the interest of the Society as well as the public money, the order passed by the learned Principal District Judge, Madurai, dated 01.12.2018 has to be interfered with and set aside.

5.During the relevant period, the 1st respondent/Appellant/petitioner worked as the Secretary in the M.D.Special 121 Pasukkaran Primary Agricultural Co-operative bank, Usilampatti Circle, Madurai District. The said bank is running since 08.05.1970.

6.The allegation against the 1st respondent herein / appellant/petitioner is that, during his tenure, some discrepancies were found in availing eligible agriculture loan proposal for Tamil Nadu Agriculture Debt Waiver and Debt Relief Scheme as on 31.03.2006 and in granting loans to the fake loaners by furnishing address of the members of the bank and also fictitious persons by using fake address and thereby caused loss to the bank to the tune of Rs.30,32,283/-.

7.The enquiry officer has commenced enquiry under Section 81 of the Act, on 13.04.2009 and examined the borrowers and sent the enquiry report dated 06.07.2009 under Section 81 of the Tamil Nadu Co-operative Societies Act, wherein it has been stated as follows:

Item No.1 :Out of 91 members, loan was sanctioned
to 67 persons by utilizing the address of
the members :Rs.24,38,022/-

Item No.2 :Out of 34 members, loan was sanctioned
to 10 persons by utilizing the address of
the members and the loan was sanctioned
to 10 fictitious persons. :Rs. 5,94,261/-

Total:Rs.30,32,283/-



8.The enquiry officer has further stated that the above said loans were sanctioned by the 1st respondent herein while he was serving as Secretary of the Bank and thereby, the enquiry officer has recommended to initiate surcharge proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, against the 1st respondent herein under Section 87 of the Tamil Nadu Co-operative Societies Act.

9.On the basis of the report under Section 81 of the Tamil Nadu Co-operative Societies Act, surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, was initiated by the Appellant herein, against the 1st respondent/appellant by issuing surcharge notice in Na.Ka.No.1437/09/Sa.P(2) dated 04.02.2010. The Surcharge officer has conducted enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act, and has passed the surcharge order in Tha.Va.No.2/2010 Sa.Pa and Na.Ka.No.1437/09/Sa/Pa. dated 28.07.2010 and has found that there was a loss to the bank to the tune of Rs.30,32,283/-.

- 1.The loan amount is alleged to have sanctioned to 77 members but they stated that they have not availed loan from the bank. :Rs.27,88,674/-
- 2.The loan amount is alleged to have sanctioned to 10 persons who are residing in the given address but they are not the members of the bank. :Rs. 2,43,609/-

Total :Rs.30,32,283/-

10.The Surcharge Officer/Deputy Registrar of Co-operative Societies, Usilampatti Circle, Thirumangalam has passed Surcharge order in Tha.Va.No.2/2010 Sa.Pa. and Na.Ka.No.1437/09/Sa.Pa. dated 28.07.2010 under Section 87 of the Tamil Nadu Co-operative Societies Act, directing the 1st respondent herein/appellant/petitioner to pay the above said loss with interest at the rate of 18% p.a. to the Bank.

11.Aggrieved by the order passed by the appellant herein, the 1st respondent/appellant/petitioner has preferred an appeal in C.M.A(C.S.)No.28 of 2011 on the file of the learned Principal District Judge, Madurai and the same was allowed on 01.12.2018. Against the said order, the revision petitioner is before this Court.

12.The 1st respondent has stated that as per proviso 2 of Section 87 of the Tamil Nadu Co-operative Societies Act, the



proceedings initiated by the 2nd respondent is barred by limitation.

13.As per proviso 2 of Section 87 of the Tamil Nadu Co-operative Societies Act, is extracted hereunder:

"87.(2)Surcharge: Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as arrear of land revenue and for the purpose of such recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864)."

14.Already charge memo was issued to the 1st respondent herein for some other charges and the 1st respondent has filed a writ petition to quash the proceedings. The charge memo was not at all related to this proceedings in this Revision.

15.When on 31.03.2006 to implement the scheme of debt relief by Government the Deputy Registrar of Societies found some discrepancies by the 1st respondent initiated suo motu proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act and issued notice on 04.02.2010. As per the notice, the 1st respondent herein has misappropriated a sum of Rs.30,32,283/-as if the loan was sanctioned to 87 members of the Society.

16.The 1st respondent/appellant has not given any explanation to the notice. The Deputy Registrar has examined all the 77 members and recorded their statements. Another 10 members were not residing in the address mentioned in the Registrar. So, he passed an order under Section 87 of the Tamil Nadu Co-operative Societies Act, on 28.07.2010.

17.Aggrieved by the above order the 1st respondent/appellant has filed the C.M.A.(CS)No.28 of 2011.

18.Whether the proceedings under Section 87 is barred by limitation?

19.According to the charge memo the delinquent did the act in the year 2006. Prior to that, he was absconding with all relevant record. For some other charges, he was suspended and charge memo was also issued on 16.05.1996. That charge memo is no way connected with the present charges.

20.The present charge is for preparing Tamil Nadu Agricultural Debt waiver and debt relief scheme as on 31.03.2006 was rushed by the 1st respondent and loans were granted to fake loaners by



furnishing address of the members of the bank and swindled the money.

21. So, cause of action for this charge is on 31.03.2006. The show cause notice was issued on 04.02.2010. The enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act, was proceeded and order was passed on 28.07.2010.

22. Within 4 ½ year from the date of the act or omission, action was initiated against the 1st respondent and was completed within 5 months from the date of show cause notice. So, the surcharge order is not barred by limitation.

23. Another objection is the Revision petitioner is not a party to the surcharge proceedings. So, he cannot file revision. But, because of misappropriation by the 1st respondent herein, the Appellant Society is an affected party. So, the revision petitioner can very well file Revision.

24. In C.M.A.(CS)No.28 of 2011, the 1st respondent has not raised any grounds except limitation.

25. Finally, this Civil Revision Petition is allowed by setting aside the fair and decreetal order, dated 01.12.2018 in C.M.A.(CS) No.28 of 2011 passed by the learned Principal District Judge, Madurai. The 1st respondent herein/Appellant/petitioner is directed to pay a sum of Rs.30,32,283/-with 18% interest from the date of surcharge order to the Revision petitioner/the President, within a period of six months, from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1.The Principal District Judge,
Madurai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+2 CC to M/s.R.R.KANNAN, Advocate (SR-35478[F] dated 23/11/2021)

+1 CC to M/s.V.R.VENKATESAN, Advocate (SR-35731[F] dated
24/11/2021)

Order made in
C.R.P (MD) No.1267 of 2021
22.11.2021

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RS (08.12.2021) 6P 7C