



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2021

CORAM

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P(NPD) (MD) No. 180 of 2014

and

M..P(MD) No.1 of 2014

WEB COPY

P. Namachivayam

...Petitioner/Appellant/Defendant

Vs.

The Deputy Registrar of Co-operative Societies

Deputy Registrar Office

Tooveypuram 3rd Street

Thoothukudi District

...Respondent/Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 19.03.2012 made in CMA(CS) No.14 of 2009 on the file of the Principal District Court, Thoothukudi.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.A.Baskaran

Government Advocate(Crl.Side)

O R D E R

The Revision petition has been filed to set aside the fair and decreetal order dated 19.03.2012 made in CMA(CS) No.14 of 2009 on the file of the Principal District Court, Thoothukudi.

2. The brief facts of the case are as follows:

The petitioner was the erstwhile Secretary of the E.E.107 Perungulam Cooperative Rural Bank Ltd. In his capacity as the Secretary, he had disbursed loan to several persons as per the bye-law, but he failed to recollect the loans within the stipulated period of limitation and thereby had caused financial loss to the Societies Act, 1983. Enquiry under Section 81 of the Tamil Nadu Cooperative Society Act was ordered in which it has been recommended to recover a sum of Rs. 14,45,338/- from the petitioner. As he has committed financial loss to the Society Surcharge Proceedings under Section 87 of the Act was initiated, and after conclusion of the Surcharge Proceedings the petitioner was directed to repay the amount initiating the recovery proceedings and against the said order the petitioner had preferred CMA (CS) No.14 of 2009 before the learned Principal District Judge, Thoothukudi. The learned Principal District Judge, Thoothukudi by an order dated 19.03.2012 upheld the order passed by the respondent, against which the revision has been filed by the petitioner.



3. The learned counsel for the petitioner would contend that Surcharge Proceedings initiated by the respondent was without any proper notice and it was conducted in one sided manner which is against the Principles of natural justice. The petitioner even before the lapse of limitation had given true and full accounts of the loaneess who had committed default and therefore under Section 90 of the Act, the Society ought to have taken action against the defaulters and collected the amount. The Society has failed to take any such steps and further the loanees of the respective loan had requested for time to repay the loan but the respondent did not consider the prayer of the loanees and passed the order against the petitioner without any basis. It is not the case where the loanees refused to pay the amount, but they had only sought for time to repay the loan. Inview of the undertaking given by the loanees the respondent had not offered any opportunity to collect the loan even after the period of limitation. However the society failed to collect loan and for the inaction of the Society the petitioner is now faulted with. The Surcharge Officer and the appellate Court have not rendered a finding that there was wilful dereliction of duty on the party of the petitioner. The petitioner was never negligent and he had within the time given instructions to the Society to take proper action against the loanees. He would further reiterate the mere negligence on the part of the petitioner is not sufficient to initiate surcharge proceedings and there is nothing on merits to show that the petitioner was wilfully negligent or that the commissions or omissions are done in a deliberate and reprehensive manner with reckless callousness with a supine indifference without due care and caution ordinarily expected from a reasonable and prudent man under the existing circumstances. He would further submit that there is absolutely no finding that the petitioners act was deliberate and intentional and there was wilful dereliction of duty. He would further submit that the petitioner had been made as an scapegoat for the negligence of the society. The learned counsel for the petitioner would further submit that the petitioner also understands that except from two loanees all the other loans had been recovered entirely by the Society subsequently.

4. The learned Government Advocate(Crl.Side) would submit that the petitioner was the Secretary of the Society and he is the person who had disbursed loan to several persons as per bye law. He had failed to recollect the loan within the stipulated period of limitation and thereby caused financial loss to the Society by not taking steps to collect loans the Society had suffered loss to the tune of Rs. 14,45,338/- and thereby enquiry under Section 81 of the Cooperative Society Act was ordered and finding that the society has suffered loss due to the acts of the petitioner, proceedings under Section 87 of the Act for recovery has been initiated. The Authority, having held that the loss was due to the acts of the petitioner, has passed the impugned order and the Tribunal had also



5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate and perused the materials available on record.

6. The allegation against the petitioner is that he had failed to recollect the borrowed amounts and thereby caused a loss to the society. But, it appears that the petitioner in his capacity as Secretary had intimated the higher Authorities and had given the details of the borrowers for recollecting the loan amount and such borrowers also did not refuse to repay the amount, but only sought time to repay.

7. Therefore, in the opinion of this court, there is no dereliction of duty or deliberate intention on the part of the petitioner to misuse his power or misappropriate the funds of Society warranting the Society to initiate surcharge proceedings. To pass surcharge order under Section 87 of the Act, the appellant should have done actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man.

8. It would be apt to refer here that in a similar situation in **A.Janakiraman and another v. Deputy Registrar of Cooperative Societies and another ((2009) 6 MLJ 1051)**, a learned Single Judge of this court, had referred to various earlier decisions on the point and held as under:-

" In surcharge proceedings, the first respondent is duty bound to prove that there was willful dereliction of duty like criminal case. The criminal Court having found that the petitioners are not guilty, the said findings are definitely in favour of the petitioners. The words used under Section 87 (1) are "willful negligence".

The said issue was considered in series of decisions of this Court.

(a) In **Sathyamangalam Co-Operative Urban Bank Limited v. Deputy Registrar of Co-operative Society and Another (1980) 2 MLJ 17**, this Court considered the scope of earlier Section viz., Section 71 of the Tamil Nadu Co-operative Societies Act, 1961, which is analogous to Section 87 of the Act, 1983 and held that **mere negligence is not sufficient to intimate surcharge proceedings.** (emphasis supplied)"

9. Further, recently, a Division Bench of this court in **K.Ajay Kumar Gosh v. Tribunal for Cooperative Cases, Nagercoil ((2009) 4 MLJ 992)**, it has been held thus,

" ... to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong by commission or omission in a deliberate and



reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the appellants with the loss caused to the society."

10. In the light of the above decisions and a catena of decision on the issue, this court has no hesitation in holding that the order passed by the Appellate Court has to be set aside and accordingly, it is set aside and the Surcharge Proceedings initiated against the petitioner herein is also set aside.

11. In the result, the civil revision petition is allowed. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

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/ /2021

Sub Assistant Registrar(CS)

aav/ssk

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
The Principal District Judge, Thoothukudi.

Copy to:
The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SPL. GP (SR-30159[F] dated 24/09/2021)

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-30173[F] dated 24/09/2021)

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MGJ(22.10.2021) 4P 6C