



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 6.10.2021.

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

C.R.P. (PD) (MD) No.2593 of 2014

and

M.P.No.1 of 2014

WEB COPY

K.S.Chandran

...Petitioner

vs.

The Regional Deputy Registrar,
Co-operative Societies (Housing),
A4, Block, Sengulam Colony,
Mannarpuram, Trichirappalli-20.

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 5.6.2014 passed in C.M.A.(CS) No.13 of 2008 on the file of the Principal District Judge (Co-operative Tribunal), Pudukkottai confirming the order of the respondent dated 27.12.2007 passed in his Na.Ka.No.70/2006.

For Petitioner : Mr.S.Meenakshisundaram,
Senior Counsel for
Mr.R.P.Ramachanthiran

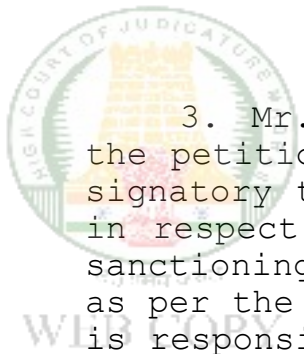
For Respondent : Mr.A.Baskaran, Govt. Advocate

ORDER

The civil revision petition has been filed by the 11th respondent in the Surcharge Proceedings against the order passed by the Principal District Judge (Co-operative Tribunal), Pudukkottai confirming the surcharge order passed by the respondent.

2. Brief facts of the case is as under:-

The petitioner was the President of the M.M.302 Pudukkottai Co-operative Housing Society, Pudukkottai and during his tenure, loans were disbursed for constructing new houses to its members and subsequently, an enquiry was instituted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 wherein it was found 12 members, who had obtained loan, but failed to construct the houses and the petitioner being president of the Society and other officials were jointly responsible for causing loss to the Society and hence, Surcharge Proceedings were initiated under Section 87 of the Act. The outcome of such proceedings was against the petitioner and thereby he had preferred appeal before the Tribunal and the said Appeal came to be dismissed, aggrieved against which, the present revision has been filed.



3. Mr.Meenakshisundaram, learned Senior Counsel appearing for the petitioner would submit that the petitioner, other than being signatory to the documents, has not been attributed any other role in respect of inspection of the plots and buildings and and for sanctioning of the loans, he had been only a counter signatory and as per the bye-laws of the Society, the Secretary is the person, who is responsible and as per Bye law 36 sub-clauses 6 and 7, it shall be the duty of the Secretary to carry on the business of the Society in accordance with Act and he is the person to have custody of the properties of the Society and the Secretary is the person, who shall make disbursement in accordance with the directions of the Board and sign in the Cash Book of the Society in token of its correctness and produce the cash balance whenever called upon to do so by the Board and the function of the petitioner as President was only supervisory in nature. He would also submit that the entire proceedings before the authority as well as before the appellate court does not disclose or attribute any role to the petitioner as if he had done any actionable wrong either by commission or omission in 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.

4. The learned Senior Counsel would further submit that in the absence of any such categorical finding by the authority and the appellate court, the petitioner cannot be mulct with the debt or with the loss caused to the Society. He would also submit that it is the admitted case that the petitioner was not served with the enquiry report despite the petitioner's request for furnishing of copies of the Report as well as document relied on, the petitioner was denied the same and thereby there was violation of principles of natural justice. The learned Senior Counsel would further submit that the alleged loss is secured by the Society by detention of documents, however, the Board had been negligent in recovering the money and apart from that, no other specific allegation has been made against the petitioner as if they acted deliberately to misappropriate the funds of the Society and thereby the revision has to be allowed and the orders of the Surcharge Authority and the appellate court has to be set aside.

5. Mr.Baskaran, learned Government Advocate appearing for the respondent would submit that the petitioner was working as President of the Society during the relevant point of time and as per bye law 36(1), the President shall have supervisory control over the affairs of the Society and therefore, he was responsible for having granted housing loans to the 12 members without properly verifying the documents and without assessing the progress of the construction, and the petitioner, being one of the Directors of the Board, is responsible for collection of the amount. However, he would submit that the documents of the borrowers are still in the society and EP proceedings are pending against the



borrowers. The learned counsel would further submit that the borrowers also agreed to return the money and due to the pendency of the revision, they are not able to recover the amounts.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. On going through the facts aspects projected by the learned counsel for the parties, this court finds that the petitioner was only a counter signatory for the sanction of loan to the Members of the Society having supervisory control over it. The enquiry revealed that certain members, who had availed the loan had not put up construction for which the loan was availed and of course, the documents pertaining to those members are also detailed by the Society and such loans are also secured ones. Apart from being counter signatory, there is no other attribution to the petitioner for having committed any fraud or mischief.

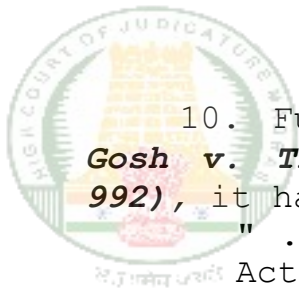
8. It is relevant to note that to initiate surcharge proceedings against an employee of the Society, he should have indulged in any actionable wrong either by commission or omission in deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances.

9. 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)"



10. Further, 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 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 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."

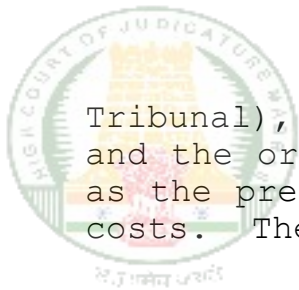
11. In **D.Ganesan vs. The Commissioner of Sugar, Chennai & others (CDJ 2019 MHC 4275)**, this court, in similar circumstances, has held as under:-

"No doubt, the petitioners have acted without care and performed their duties in a casual and negligent manner. However, such negligence alone is not sufficient to hold them liable under Section 87 of the said Act, unless the same is coupled with wilful or deliberate intention to commit such negligence. As there is no finding given by the authorities below to that effect, then the principle that has been laid in the series of decisions, referred to supra, of this Hon'ble Court has to be applied to this case to hold that the proceedings under Section 87 of the said Act cannot be initiated against the petitioners in the absence of any wilful negligence on their part.

.....

When the staffs were given special assignment to do certain acts, the higher officials have to verify the work done by the staffs. However, when the subordinates prepared a note or prepared a bill and submitted before the higher officers, except to put initial, under the impression that the bills are genuine, the higher officer has no other role. Merely because the revision petitioner was the employer of the institute, he cannot fastened with liability."

12. In view of the above discussion and the ratio laid down in the above decisions, this court has no hesitation in holding that the order passed by the Appellate Court and the Surcharge Proceedings initiated against the petitioner herein also has to be set aside. Accordingly, the civil revision petition is allowed. The order passed by the Principal District Judge (Co-operative



Tribunal), Pudukkottai dated 5.6.2014 in C.M.A.(CS) No.13 of 2008 and the order passed by the the respondent dated 27.12.2007 insofar as the present revision petitioner is concerned, are set aside. No costs. The connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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.Principal District Judge
(Co-operative Tribunal),
Pudukkottai.
- 2.The Regional Deputy Registrar,
Co-operative Societies (Housing),
A4, Block, Sengulam Colony,
Mannarpuram, Trichirappalli-20.

+1 CC to M/s.R.P.RAMACHANTHIRAN, Advocate (SR-31483[F]
dated 07/10/2021)

+1 CC to M/s.SPL.GP (SR-31550[F] dated 07/10/2021)

C.R.P. (PD) (MD) No.2593 of 2014
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