



CRP No.2776 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	29.06.2022
PRONOUNCED ON :	19.10.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

Civil Revision Petition No.2776 of 2019
and CMP No.18204 of 2019

S.Boovaragasamy

.. Petitioner/Appellant

Vs

1.The Assistant Director of Handloom and Textiles

Office of the Assistant Director,
of Handloom and Textiles
No.17 SIDCO Industrial Estate
Thirubhuvanam Kumbakonam
Tanjore District

2.The President,

Sengunthapuram Tiruvalluvar Handloom
Weavers Cooperative Production,
and Sale Society Limited
TR(H) 139 Sengunthapuram Post,
Jayamkondan Via, Ariyalur District

3.The Managing Director,

Sengunthapuram Tiruvalluvar Handloom
Weavers Cooperative Production,
and Sale Society Limited TR(H) 139
Sengunthapuram Post, Jayamkondan Via
Ariyalur District.

.. Respondents//respondents



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Prayer: Civil Revision Petition is filed against the fair and decreetal order dated 25.02.2019 passed in CMA(CS) No.9 of 2016 on the file of the Principal District Judge, Ariyalur, and set aside the proceedings in Award No.4360/2014/A4 dated 19.09.2004 on the file of the Assistant Director of Handloom and Textiles, Kumbakonam, Tanjore District and remit back to the 1st respondent.

For Petitioners .. Mr.C.Prakasam

For Respondent .. Dr.S.Surya for R1
Additional Government Pleader (CS)
Mr.L.P.Shanmugasundaram for R2 & R3

ORDER

The Civil Revision Petition is filed against the order dated 25.02.2019 passed in CMA(CS) No.9 of 2016 on the file of the Principal District Judge, Ariyalur.

2. The petitioner was the erstwhile Manager of the respondent Society. Surcharge proceedings were initiated against him in the year 2014. In the said surcharge proceedings, the loss occurred to the Society was ordered to be recovered from the petitioner by the first respondent. The petitioner therefore filed an appeal before the Principal District Judge, Ariyalur, which came to be dismissed and hence, the present Civil



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Revision Petition.

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3.The case of the petitioner before the first respondent and the first appellate Court in nutshell is as follows:

As per the second proviso to Section 87(1) of the Tamil Nadu Cooperative Societies Act, 1983, (hereinafter referred to as 'the Act'), which dealt with the limitation of the surcharge proceedings and as per the 1st proviso, the 1st respondent ought to have completed the surcharge proceedings within a period of six months from the date of commencement of the surcharge notice. However, the surcharge notice was issued on 26.03.2014 and the final order dated 19.09.2014 stated to have been served on the petitioner on 12.11.2014, which is beyond the period of six months and hence, on the said sole ground, the surcharge proceedings is not sustainable. The 1st respondent failed to forward the inspection report to the appellant and thereby violated Section 82(5) of the Act before initiation of the proceedings under Section 87 of the Act and hence, it is void in law. Without there being a complaint, the first respondent proceeded to order an inspection under Section 82 of the Act and hence, the appointment of the inspecting authority is not valid under



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Section 82 of the Act. The inspecting authority failed to peruse the audit report for the financial years 2009-2010, 2010-2011, 2011-2012 and hence, the non application of mind on the part of the 1st respondent vitiate the initiation of inspection. When the books of accounts have been audited and there is no defects pointed out by the auditing department, the defects pointed out by the inspecting authority is not valid. The petitioner is not responsible for the alleged loss to the tune of Rs.14,19,898.05/- and as per the audit report, every transaction has been properly passed by the special officer for the respective financial years and hence, the recovery order is not valid in the eye of law.

4. In the appeal, the lower appellate Court has allowed the appeal thereby remand back the matter to the first respondent. While setting aside the surcharge proceedings, the first respondent was directed to issue summon to the petitioner and witnesses by following the procedure contemplated under the Act and thereafter by giving opportunity to the petitioner and conduct an inspection, initiate fresh proceedings and conclude the proceedings.



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5. The petitioner aggrieved by the said findings of the first appellate Court is before this Court with this civil revision petition.

6. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the first respondent and the learned counsel for the respondents 2 and 3.

7. The learned counsel for the petitioner would submit that,

(i) When there is no wilful negligence, as per the decision in 2011(5) CTC 197, surcharge proceedings cannot be initiated;

(ii) When the negligence on the part of the petitioner is not proved, then the entire surcharge proceedings is vitiated;

(iii) The authority has not properly considered the oral and documentary evidence;

(iv) As per the decision reported in 2009(6) MLJ 1051 (MAD), mere carelessness or dereliction of duty is not sufficient to initiate surcharge proceedings and hence, the very initiation of the surcharge proceedings is bad in the eye of law and he relied on the following



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judgments:

(1) M.Karuppannan v. The Deputy Registrar and others (2012 (1) CWC 794)

(2) K.Govindasamy v. A.Rajammal and others (Manu/TN/10121/2013)

(3) A.Janakiraman and another v. Deputy Registrar of Cooperative Societies and another ((2009) 6 MLJ 1051);

(4) S.Subramanian v. The Deputy Registrar of Cooperative Societies and others (2002 (2) LW 185)

(5) Gabriel v. The Deputy Registrar (2003(3) CTC 23)

(6) The State of Tamil Nadu v. S.Ramasamy (2011(5) CTC 197)

8. By filing a counter affidavit, the learned counsel for the 1st respondent submitted that pursuant to the inspection conducted in the respondent society, it came to light that the petitioner has caused loss to the tune of Rs.16,39,898.05/- and since the petitioner was responsible for the said loss, surcharge proceedings were initiated to recover the amount of Rs.14,19,898.05/- reducing the amount of Rs.2,20,000/- that has been



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returned by the petitioner himself. Pursuant to the inspection report, summons were issued to the President, the petitioner and to the Special Officer. Accordingly, the petitioner appeared on 30.06.2014 and the petitioner has also given deposition refuting the charges framed against him. The 1st respondent initiated action under Section 167 of the Act attaching the properties of the wife of the petitioner on 10.10.2013. The wife of the petitioner filed a writ petition before this Court in W.P.no.27265/2016 and this Court, by order dated 08.03.2017, quashed the impugned proceedings and remitted back the matter to the first respondent for fresh adjudication under Section 167 of the Act.

9. While a challenge was made by the petitioner to the surcharge proceedings, the first appellate Court, set aside the surcharge proceedings and remitted back the matter to the first respondent for retrial to pass an award afresh after issuance of notice and summon, after providing sufficient opportunities to the petitioner. It is the submission of the learned Additional Government Pleader that loss caused to the Society is yet to be recovered from the petitioner. The order passed by the first appellate



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Court is reasonable and hence, it need not be interfered with.

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10. I have considered the submissions made on either side and perused the materials available on record.

11. It is seen that the order of the first appellate Court is passed adhering to the principles of natural justice, which do not cause any prejudice to the petitioner. The first respondent has given an undertaking in their counter affidavit to the effect that after issuing summons and furnishing of documents to the petitioner, the first respondent would conclude the proceedings. It is further undertaken that the order of the first appellate Court would be strictly complied with in letter and spirit. Since the first respondent has given an undertaking, no interference is warranted to the order of the first appellate Court.

12. Accordingly, the civil revision petition is dismissed and the first respondent is directed to serve necessary documents, serve the enquiry report to make his submissions and thereafter, after giving opportunities to



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the petitioner to raise all his contentions, pass orders within a period of six months from the date of receipt of a copy of this order. No costs.

Consequently connected Miscellaneous Petition is closed.

19.10.2022

Index : Yes/No
Internet : Yes
RR/PM

To

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Ariyalur
- 2.The Assistant Director of Handloom and Textiles
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of Handloom and Textiles
No.17 SIDCO Industrial Estate
Thirubhuvanam Kumbakonam
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J.NISHA BANU, J.

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