



W.P.(MD).No.1709 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 29.06.2022

ORDER PRONOUNDED ON : 04.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.1709 of 2011

and

MP(MD).No. 1 of 2011

1.P.Gurunathan (died)

2.G.Vijaya

3.G.Ushakanmani

...Petitioners

(Petitioners 2 & 3 are impleaded vide Court Order dated 15.06.2022)

Vs

1.The Principal District Judge
(Co-operative Tribunal), Madurai
Madurai District

2.The Deputy Registrar of Co-operative Societies
Madurai Circle, Madurai

.....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the first and second respondents made in Civil Miscellaneous Appeal (Co-Operative Societies) No.43/2007 dated 19.02.2010 in S.C.No.13/05-06 dated 05.09.2006 respectively and quash the same.



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For Petitioner : Mr.S.Mohandass
For Respondents : Mr.P.Thilakkumar
Government Pleader
For Mr.M.Ramesh
Government Advocate

ORDER

The present writ petition has been filed challenging an order passed by the Co-operative Tribunal on 19.02.2010 in CMA(CS).No.43/2007 confirming the award passed in the surcharge proceedings on the file of the second respondent dated 05.09.2006.

2.The writ petitioner was working as a Secretary of the Co-operative Bank. He was issued a show cause notice for initiation of proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act on 09.03.2006. The petitioner offered his explanation on 09.06.2006. Not being satisfied with the explanation, surcharge proceedings were initiated as against the writ petitioner and an award came to be passed on 05.09.2006 holding that the petitioner is liable for a monetary loss of a sum of Rs.2,29,225/- towards loss due to delayed auctioning of the pledged jewels. The said award was challenged by the writ petitioner before the Principal District Court/ Co-operative Tribunal in CMACS.No.43 of 2007. The learned District Judge



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concluded with the findings of the Original Authority and dismissed the appeal. As against the same, the petitioner has filed the above writ petition.

3.The writ petitioner was issued with a charge memo on 09.03.2006 alleging 8 charges as against the petitioner. Out of the 8 charges, the petitioner was found to be guilty with regard to the charges 1 and 3 alone by award of the second respondent herein. As far as the third charge is concerned, the petitioner was made liable to pay a sum of Rs. 601.19. The said liability has been accepted by the petitioner and the amount has also been deposited. Hence, the subject matter of the writ petition is only the first charge.

4.The first charge that was levied as against the writ petitioner is that the writ petitioner being the Secretary of the Co-operative Bank had not taken immediate steps to auction the unredeemed jewels. The jewels were auctioned belatedly and by that time, the rate of the gold had come down and the Bank incurred a loss of Rs.2,29,275/-. For the said charge, the petitioner has submitted an explanation that, then existing board was not in favour of the immediately auctioning the jewels. But, it was interested in collecting the loan amount. Every time, the auction was adjourned at the oral direction of the Board/Special Officers. Only the Board/Special Officer has got the



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authority to fix the date of auction. Though the petitioner had sent several letters to the then Existing Board and the Special Officers, they have delayed the said auction for the reasons best known to them. Hence, the petitioner cannot be found fault for delaying the auction proceedings.

5.The second respondent herein in his surcharge proceedings dated 05.09.2006 had fixed the liability upon the petitioner not on the ground of delay in conducting the auction of the unredeemed jewels. The second respondent had arrived at a finding that the monetary loss incurred by the Bank ought to have been setright by initiating Arbitration Proceedings under Section 90 of Co-operative Societies Act as against the jewel owners. The said auction has not been performed by the writ petitioner and hence, he is liable to pay a sum of Rs.2,29,225/-.

6.In the appeal, the Co-operative Tribunal in Paragraph No.6 has concurred with the findings of the second respondent herein and rejected the contention of the writ petitioner on the ground that no document has been filed to substantiate the case of the petitioner that he has initiated Arbitration Proceedings.

7.The learned counsel for the petitioner had filed a typed set of papers from which it could be seen that the Arbitration Proceedings have been



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initiated by the writ petitioner on 11.12.2003 before the second respondent.

The same second respondent has issued a show cause notice on 09.03.2006 and passed an award as against the petitioner on 05.09.2006. Hence, it is evident that the finding arrived at by the second respondent as well as by the Tribunal that the petitioner has not initiated any Arbitration Proceedings is factually incorrect.

8.The charges that were levied as against the writ petitioner is that no immediate steps were taken by the writ petitioner for bringing the jewels for auction. It is to be noted that no charge was framed at any point of time as against the writ petitioner for not initiating the Arbitration Proceedings under Section 90 of Co-operative Societies Act. Without framing a charge, a finding has been rendered by the second respondent herein fixing the liability upon the writ petitioner. The said finding has also been confirmed by the Co-operative Tribunal. The findings regarding non-initiation of Arbitration Proceedings is clearly perverse in the absence of any charge memo issued to the writ petitioner.

9.The petitioner has not been found guilty of the charge that was framed against him i.e. delay in auctioning the unredeemed jewels. But, he was found guilty on the ground of non-initiation of arbitration proceedings



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for which no charges were framed against him. Hence, viewed from any angle, the liability fixed upon the writ petitioner in the surcharge proceedings is not legally sustainable. Both the Original Authority as well as the Appellate Authority have given a finding which is factually incorrect and beyond the scope of the charge memo.

10.In view of the above said discussion, the writ petition stands allowed. The second respondent is directed to disburse the terminal benefits of the writ petitioner as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2022

Internet : Yes/No
Index : Yes/No
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To

1.The Principal District Judge
(Co-operative Tribunal), Madurai
Madurai District

2.The Deputy Registrar of Co-operative Societies
Madurai Circle, Madurai



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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