



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 21.04.2022

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P(PD) (MD) .No.791 of 2022

and

C.M.P(MD) .Nos.3195 and 3197 of 2022

A.Muthu Krishnan
S/o.Adaikkan

: Petitioner/Appellant

Vs.

Deputy Registrar of Co-operative Society,
Kajamalai,
Trichy District

: Respondent/Respondent

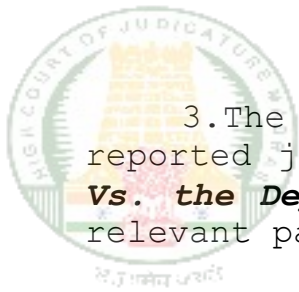
PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed by the learned Principal District Judge, Tiruchirappalli in C.M.A (CS).No.29 of 2018 dated 07.02.2019 by allowing this Civil Revision Petition.

For Petitioner : Mr.K.Gurunathan
For Respondent : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

The Civil Revision Petition has been filed to set aside the judgment and decree passed by the learned Principal District Judge, Tiruchirappalli in C.M.A(CS).No.29 of 2018 dated 07.02.2019 by allowing this Civil Revision Petition.

2.The petitioner was working as Secretary in the Society. The respondent found discrepancy in the jewel loan pledges and entries in the book of accounts and thereafter, framed the charges against the petitioner. Surcharge proceedings initiated against the petitioner and thereafter, the enquiry officer found guilty for the charges by the order dated 12.01.2018. Aggrieved over the same, the petitioner has preferred a Civil Miscellaneous Appeal in C.M.A(CS). No.29 of 2018. Neither the respondent nor his counsel was not appeared in the Civil Miscellaneous Appeal. The appellate Court found that without furnishing 81 enquiry report to the appellant, the Surcharge proceedings have been initiated. Therefore, the appellate Court allowed the appeal and remitted back the matter to the respondent for fresh consideration.



3.The learned counsel for the appellant relied upon the reported judgment in **2013 (1) CTC 367** in the case of **S.Kumarasamy Vs. the Deputy Registrar of Co-operative Societies, Kovilpatti**, the relevant paragraphs are extracted hereunder:-

'Tamil Nadu Co-operative Societies Act 1983 (T.N.Act 30 of 1983) Section 87 - Surcharge proceedings- Principles of Natural Justice- Enquiry Report under Section 87 - Report submitted to petitioner long after issuance of Notice under Section 87- Report submitted to petitioner long after issuance of Notice under Section 87 in such circumstance, held, petitioner not afforded with ample opportunity at time of receipt of notices and entries proceedings vitiated on account of violation of principles of Natural justice.

The above said case law is applicable in the present fact of the case. The Hon'ble high Court held that when the enquiry authority has not given fair opportunities to the delinquent and also not given section 81 enquiry report, it is vitiated entire proceedings. Here, the appellant has raised his main objection for the said facts. Even sufficient time given to the respondent, neither the respondent nor the counsel for the respondent appeared before this Court. The said attitude of the respondent reveals that the respondent has no interest to contest the appeal against the appellant, is one of the reason to set aside the order.'

4.On perusal of records, it shows that after finding the defects on the side of the enquiry officer, the appellate Court remitted back the matter for fresh consideration within two months from the date of receipt of copy of that order. But, enquiry officer issued the notice only on 28.01.2022 for initiating the Surcharge proceedings and the respondent did not filed any extension petition to extend the time to comply with the order.

5.The learned counsel for the respondent filed a counter affidavit before this Court, wherein it is stated that the judgment and Decree was not communicated to the respondent and the same was came to the knowledge of the respondent only on the receipt of a letter dated 10.01.2022 and the amount involved in the case is very huge (i.e Rs.50,00,000/-) .

6.Since the respondent did not appeared before the appellate Court, he cannot to state that the order of the Civil Miscellaneous Appeal can received only on 10.01.2022. Already, the ARC proceedings are initiated and the the same were pending and the property also attached.



7.Considering the facts and the circumstance of this case, the judgment and decree passed by the learned Principal District Judge, Tiruchirappalli in C.M.A(CS).No.29 of 2018 dated 07.02.2019 is set aside and this Civil Revision Petition is allowed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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,
Tiruchirappalli.

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-20373[F] dated 22/04/2022)
+1 CC to M/s.SPL.GP. (SR-20539[F] dated 22/04/2022)

C.R.P (MD) .No.791 of 2022
21.04.2022

RS (01.06.2022) 3P/4C