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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	09.03.2022
DELIVERED ON	31.03.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No.1808 of 2021

M/s.Aruppukottai Cooperative Primary Agricultural
and Rural Development Bank Limited,
Represented by its Managing Director,
Aruppukottai,
Virudhunagar District. ...Petitioner/1st Respondent

Vs.

1.K.Babu ...1st Respondent/Appellant

2.The Deputy Registrar of Cooperative Societies,
O/o. Deputy Registrar of Cooperative Societies,
Aruppukottai,
Virudhunagar District. ...2nd Respondent/2nd Respondent

PRAYER: Civil Revision Petition under Section 227 of Constitution of India, to set aside the Judgment passed in C.M.A.(CS)No.21 of 2005 dated 05.10.2013 by the learned Principal District Judge, Virudhunagar District at Srivilliputhur.

For Petitioner	:Mr.D.Shanmugaraja Sethupathi
For R-1	:Mr.M.Jerin Mathew
For R-2	:Mr.M.Senthil Ayyanar, Government Advocate

ORDER

This Civil Revision Petition has been filed to set aside the Judgment, dated 05.10.2013 in C.M.A.(CS)No.21 of 2005 passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The appellant has filed C.M.A.(C.S.) No.21 of 2005 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur, questioning the propriety of the order passed



in Tha.va.2/2001-2002/Sa.Pa. Dated 20.09.2003 by the 2nd respondent imposing monetary liability on the appellant and the same was allowed on 05.10.2013. Against the said order, the Society has filed this Civil Revision Petition.

4. Heard on either side and perused the material documents available on record.

5. The Civil Revision Petition is filed on the ground that the enquiry officer, on the basis of the Inspection Report, has recommended to initiate recovery/surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, against the office bearers of the Bank, namely; President, Vice President and other Board of Directors, besides recommending to initiate action against the concerned employees, including the first respondent who was given inflated benefit illegally for some extraneous consideration and accordingly, surcharge proceeding was initiated against the first respondent and others under Section 87 of the Act, for misappropriation committed by the first respondent and others. Under such circumstances, the interference of this Court under Article 227 of Constitution of India, become absolutely necessary, when irreparable prejudice is caused to the petitioner due to the dilatory tactics adopted by the respondents and consequential inaction on the part of the Trial Court.

6(i). The case of the revision petitioner is that the first respondent was working as Supervisor in the petitioner's society. While so, the administrative Board consisting of President, Vice President and other Board of Directors had entered into a settlement purported to have been made under Section 18(1) of Industrial Disputes Act, with the employees of the Bank giving promotion and revision of pay scale arbitrarily, without following the due process of law. The second respondent has prima facie found various irregularities and mismanagement in giving promotion and revision of pay scale to the employees including the first respondent herein. The second respondent has ordered to conduct inspection under Section 82 of the Tamil Nadu Cooperative Societies Act to unearth the irregularities and to find out the quantum of loss sustained by the bank on account the above irregularities.

6(ii). The enquiry officer has submitted his report under Section 82 of the Act holding that the officer bearers of the Bank namely President, vice President and Board of Directors, in connivance with the employees, has granted promotion and revision of pay scale in violation of the Tamil Nadu Cooperative Societies Act and rules made there under and in violation of the periodical Government Orders issued by the Cooperative Department and circulars issued by the Registrar of Cooperative Societies and illegally promoted the employees including the first respondent based on the fraudulent settlement made under Section 18(1) of the Industrial



Disputes Act. It is pertinent to mention at this juncture that the promotion was given in utter defiance to the cadre strength fixed by the special by-law and circular issued by the Registrar. Thereby the Bank sustained Rs.2,21,803/-on account of the irregularities committed by the first respondent and others.

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6(iii).The enquiry officer, on the basis of the Inspection Report, has recommended to initiate recovery/surcharge proceedings under Section 87 of the tamil Nadu Cooperative Societies Act, against the office bearers of the Bank namely; President, Vice President and other Board Directors, besides recommending to initiate action against the concerned employees, including the first respondent who was given the inflated benefit illegally for some extraneous consideration. Accordingly, surcharge proceeding was initiated against the first respondent and others under Section 87 of the Act for the misappropriation committed by the first respondent and others.

6(iv).The second respondent has initiated recovery proceeding in respect of the irregularities committed by the first respondent by issuing show cause notice dated 08.06.2001. The above show cause notice was received by the first respondent/ on receiving the Notice, the first respondent has appeared through his counsel and conducted the case. After giving sufficient opportunity to the first respondent and after considering the relevant records and deposition of the witnesses, the second respondent has passed a surcharge decree vide Tha.Va.No.2/2001-2002 dated 20.09.2003 as against the first respondent and others holding that they are liable to pay a sum of Rs.2,21,803/-to the petitioner Bank. He was directed to pay the decree amount of Rs.2,21,803/-together with interest at the rate of 18% till the realization. As against the decree dated 20.09.2003 the first respondent had filed a Civil Miscellaneous Appeal before the Cooperative Tribunal and Principal District Court, Virudhunagar at Srivilliputhur and the same was allowed by the Tribunal by Judgment, dated 05.10.2013.

7.As per the revision petitioner since there is no post of Assistant Secretary sanctioned to the revision petitioner bank by the Registrar of Cooperative societies, the promotion given to the 1st respondent/appellant as Assistant as Secretary from the post of Supervisor is illegal and salary given to the appellant there is a loss of Rs.71,504/-to the bank. But, the above promotion was given only on the basis of 18(1) of Tamil Nadu Cooperative Societies Act.

8.On 16.08.2000 the 1st respondent was worked as Supervisor and now he was also retired from service.

9.The 1st respondent was prosecuted on the basis of 18(1) of Tamil Nadu Cooperative Societies Act. He was also working as Assistant Secretary and he did his job for the post and received



salary for the post. There is no fault on the part of the 1st respondent/appellant.

10. There is no allegations of actionable wrong misappropriation of funds or wilful negligent on the part of the 1st respondent/appellant.

11. The Judgment reported in **2009(4) MLJ 1992, K.Ajay Kumar Gosh V. Tribunal For Co-operative Cases**, in which this Court held as follows:

.....
 "To pass surcharge order under Section 87 of the Tamil Nadu CO-operative Societies Act, the employees of the Co-operative Society 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 the existing circumstances. In the absence of such categorical finding, it is not possible to mulct the employees with the loss caused to the society. "

12. In view of the foregoing reasons, this Court has no valid reason to interfere with the order, dated 05.10.2013 passed by the Court below in C.M.A.(CS)No.21 of 2005.

13. Finally, this Civil Revision Petition stands dismissed by confirming the Judgment, dated 05.10.2013 in C.M.A.(CS)No.21 of 2005 passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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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



To

The Principal District Judge,
Virudhunagar District at Srivilliputhur.

+1 CC to M/s.SPL GP (SR-15702[F] dated 31/03/2022)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-15956[F] dated 01/04/2022)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-16408[F] dated 04/04/2022)

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31.03.2022

NSN (CO)

KB(22.04.2022) 5P 5C