



CRP No.3423 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3423 of 2012
and M.P.No.1 of 2012

S.Natarajan

..Petitioner

Vs.

1.The Deputy Registrar (Crdit),
Kuralagam, Chennai.

2.The Customs Employees' Co-op.
Credit and Thrift Society,
Rep. by its Secretary,
Customs House, Chennai.

3.Dhanusu
4.K.Parthiban

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order passed in C.M.A.No.4 of 2010 dated 11.11.2011 by the Chief Judge, Special Tribunal for Co-operative Cases, Chennai, confirming the order passed by the Deputy Registrar (Credit), Kuralagam, Chennai, in the proceedings Na.Ka.No.7333/2006/Sa.Pa.1(2) dated 18.12.2008.

For Petitioner : Ms.T.Madhumitha
for M/S.C.Regurajan



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For Respondents

For R1 : Mr.M.R.Gokul Krishnan
Additional Government Pleader

For R2 : Ms.T.Madhumitha
for Mr.C.Regurajan

For R3 & 4 : Not ready in notice

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 11.11.2011 passed in C.M.A.No.4 of 2010 on the file of the Chief Judge, Special Tribunal for Co-operative Cases, Chennai, thereby confirming the order passed by the first respondent herein dated 18.12.2008 thereby directed to recover a sum of Rs.8,94,507/- out of Rs.16,22,855.65/- from the petitioner herein.

2. While the petitioner was working as a Vice President under the second respondent Society namely the Customs Employees' Co-operative Credit and Thrift Society, Chennai, a sum of Rs.16,22,855.65/- was misappropriated and hence, the first respondent ordered enquiry by a proceedings dated 14.07.2006 and concluded that a sum of Rs.16,22,855.65/- was misappropriated and



recommended for initiation of surcharge proceedings as contemplated under

Section 87 of Tamilnadu Co-operative Societies Act, 1983, to recover the said amount. Accordingly, the petitioner was duly served with summons in the proceedings under Section 87 of Tamilnadu Co-operative Societies Act, 1983. The second respondent ordered to recover Rs.16,22,855.65/-. Aggrieved by the same, the petitioner preferred an appeal before the Chief Judge, Special Tribunal for Co-operative Cases, Chennai, and the same was confirmed and hence the present civil revision petition.

3. The learned counsel for the petitioner would submit that the initiation of surcharge proceedings itself is barred by law of limitation since it has been initiated after a period of seven years. The basic ingredients to initiate surcharge proceedings were not fulfilled by the respondents since there was no breach of trust and there was no wilful negligence on the part of the petitioner. Therefore, the petitioner has nothing to do with the alleged misappropriation by others, namely the Secretary of the above said society.

4. The learned counsel for the petitioner would further submit that the Secretary by name R.Subramanian, categorically admitted his liability with



regard to manipulation of accounts. Therefore, the petitioner is not at all liable to pay any amount as alleged by the second respondent herein. The petitioner is neither directly involved in misappropriation nor stood benefited of any amount misappropriated by the Secretary. Therefore, the Secretary alone was solely responsible for the fraud and misappropriation of the total amount of Rs.16,22,855.65/-. In fact, while he was alive, he remitted a portion of the amount which was misappropriated by him. Thereafter, the first respondent had ordered attachment of his property and auction was conducted to realize the said amount. Therefore, the petitioner is not liable to pay any amount.

5. Per contra, the learned counsel for the respondents would submit that the petitioner has committed wilful negligence in the entire transactions and he categorically admitted that without even verifying the ledger, he signed since he trusted the Secretary. The petitioner is the Vice President of the society and as such, without his connivance the Secretary could not have committed the misappropriation of the said huge amount. Further, the petitioner admitted that he had signed in all the ledgers.

6. Heard the learned counsel for the petitioner and the learned counsel for



the respondents and perused the materials available on record.

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7. On perusal of records revealed that enquiry was conducted under Section 87 of Tamilnadu Co-operative Societies Act, 1983, and concluded that there was misappropriation by the petitioner and others to the tune of Rs.16,22,855.65/- in which, the petitioner had misappropriated to the tune of Rs.8,94,507/-. Based on the enquiry report, the said surcharge proceedings was initiated under Section 87 of Tamilnadu Co-operative Societies Act, 1983. The second respondent passed an order to recover a sum of Rs.8,84,507/- from the petitioner. The first respondent ordered enquiry on 07.04.2006 and the enquiry report was received on 14.07.2006. Thereafter, sufficient opportunities were given to the petitioner and others in the surcharge proceedings initiated under Section 87 of Tamilnadu Co-operative Societies Act, 1983, and passed order.

8. The limitation prescribed under Section 87(1) of Tamilnadu Co-operative Societies Act, 1983, is directory in nature and not mandatory. That apart, there was misappropriation of public funds. Therefore, the delay in conducting proceedings cannot be a ground to nullify it. That apart, the petitioner is also responsible for the delay in the proceedings.



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9. A perusal of records revealed that at request of the petitioner, the respondents could not have completed the enquiry in time. Further, there was no prejudice caused to the petitioner due to the delay. Therefore, the surcharge proceedings are not barred by limitation. Further, on perusal of records revealed that the petitioner categorically admitted with regard to manipulation of accounts and commitment of fraud and wilful negligence. That apart, without connivance of the petitioner, the Secretary could not have committed the misappropriation of such a huge amount. In fact, apart from the present surcharge proceedings two other surcharge proceedings are also pending as against the Secretary. Therefore, the Court below rightly confirmed the surcharge proceedings passed by the second respondent herein and this Court finds no infirmity or illegality in the orders passed by the Court below.

10. Accordingly, the civil revision petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.01.2023

Speaking/Non-speaking order
Index : Yes/No
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G.K.ILANTHIRAIYAN.J,

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To

- 1.The Chief Judge, Special Tribunal for Co-operative Cases,
Chennai.
- 2.The Deputy Registrar (Credit),
Kuralagam, Chennai.
- 3.2.The Customs Employees' Co-op.
Credit and Thrift Society,
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