



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(NPD)No.2158 of 2012
and C.M.P.No.8292 of 2022**

1.T.K.Mannumudhaliar

2.S.Delhibabu

3.R.Ravi

4.Pathmavathi

5.M.Devagi

... Petitioners

Vs.

1.The Assistant Director of Handloom
Vellore.

2.The Special Officer
Vazhapandhal
Arcot Taluk
Vellore District.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in C.T.A.7 of 2004 dated 27.06.2005 on the file of the Principal District Court (Co-operative Tribunal), Vellore District.



WEB COPY

CRP(NPD)No.215,



For Petitioners : Mr.T.P.Prabakaran

For Respondents : Mr.B.Tamilnidhi
Additional Govt. Pleader

ORDER

The revision arises against an order, whereunder an award was passed as against the civil revision petitioners for the loss of Rs.11,05,790/-.

2. It is an admitted case that the petitioners are all members of Pachaiaamman Pattu Kaithari Nesavalar Kooturavu Sangam, who is the 2nd respondent before me. Joint and several liability was fixed by the 1st respondent for the aforesaid sum at the rate of 12% per annum. The 1st respondent had initiated proceedings against 10 persons. He fixed the liability only against the directors, who were 1 to 6 and rejected it as against the claim of 7 to 10. As against the rejection of claim, no appeal was filed and therefore, we need not be troubled in that situation.

3. According to the petitioners, they are only Honorary directors and therefore, they are not responsible for the loss. This argument was rejected saying that as members, they are liable for any loss that was caused to the society, while it was under their management. The directors wanted to fix the entire liability on one Pandian, who was the Secretary of the institution. A director of the institution cannot shift his responsibility and fix the liability only on the paid servant/Secretary.



WEB COPY

4. Aggrieved by the order of fixation of liability, the petitioners preferred C.T.A.7 of 2004 on the file of the Principal District Court, Vellore. The said C.T.A. was dismissed on 27.06.2005.

5. Two points were argued before the learned Appellate Authority. First point is that challenging the order under Section 87 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as 'the Act'), a writ petition had been presented in W.P.No.19911 of 2004 and the same had been dismissed on 23.01.2012. The second point that was urged there is that the claim was barred by limitation.

6. In so far as the first point is concerned, Mr.T.P.Prabakaran, learned counsel for the petitioners will bring to my notice the order passed by this Court in W.P.No.19911 of 2004. I am convinced with the argument of Mr.T.P.Prabakaran that the writ petition was not dismissed on merits. The learned Single Judge of this Court had held that since C.T.A.7 of 2004 is pending, he is not interfering with the order on merits. The dismissal of the writ petition as not maintainable does not mean that the learned Appellate Authority cannot go into the matter on merits of the case. The finding of the learned Appellate Authority that since the writ petition had been filed and dismissed, the appeal also should be dismissed, is erroneous. No doubt, if this Court has gone into the merits of the case and dismissed the writ petition, then

C.T.A.7 of 2004 could not have been proceeded on the merits of the case. Since the



writ petition was dismissed saying that C.T.A.7 of 2004 has been filed, it does not imply that C.T.A.7 of 2004 cannot be gone into independently.

WEB COPY

7. On the second ground of limitation, which was pleaded, I found that the order of the learned Appellate Authority is unimpeachable. The second ground that the learned counsel had pleaded before the learned Appellate Authority was that the proceedings are brought by virtue of Section 87 of the Act. The Act grants a period of six months to complete the enquiry under Section 87 of the Act and also grants the power to the superior authority to extend it by way of further period of six months. As seen in this case, the entire proceedings had been completed within a period of one year from the date of initiation of the proceedings. The proceedings were initiated on 28.11.2003 and they were completed within a period of one year on 06.02.2004. Therefore that plea was not available to the civil revision petitioners.

8. Mr.T.P.Prabakaran, learned counsel for the petitioners would say that there are further points to be urged viz a viz., right of the director of the Co-operative Society as against the loss caused to the society.

9. It is not in dispute that the petitioners 1 to 5 are members of the society. The society was under the care and control during the relevant time. There has been loss occasioned to the society on account of the acts of the petitioners, who were the then



directors of the society. Therefore, if not for the liability as the director nonetheless, they are liable, as members who have caused the loss to the society. The learned trial Authority has properly appreciated the evidence and has come to the conclusion fixing the responsibility on the then directors. Apart from that, this point had not been urged before the learned Appellate Authority viz., the learned Principal District Judge at Vellore.

10. The penultimate point urged by Mr.T.P.Prabakaran, learned counsel for the petitioners is that for the very same set of charges, the petitioners were arrayed as accused in C.C.No.61 of 2006 before the learned Judicial Magistrate No.II, Vellore. He would state after hard contest and trial, they were acquitted. I am not dealing with the criminal trial in this case. I am only dealing with the civil liability that is fastened on the petitioners. The acquittal in the criminal case does not mean they are not answerable to the society in a civil proceedings. In any event, the finding of the Civil Court is not binding on the criminal Court and the same rule applies vice versa.

11. The last point urged by Mr.T.P.Prabakaran, learned counsel for the petitioners is that interest at the rate of 12.% per annum from 06.02.2004 till date is excessive.



WEB COPY

12. Mr.B.Tamil Nidhi, learned Additional Government Pleader, appearing for the respondents/society would submit that interest fixed is reasonable and it does not require any interference.

13. Considering the fact that all the petitioners were senior citizens and the matter has been pending for two decades, I feel in the interest of justice, the interest rate should be reduced from 12% to 6% per annum.

14. With the above modification in so far as the interest rate alone, all the other points are rejected, the Civil Revision Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.07.2023
(2/2)

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

kj



WEB COPY

CRP(NPD)No.215,



V.LAKSHMINARAYANAN,J.

Kj

To

1.The Assistant Director of Handloom
Vellore.

2.The Special Officer
Vazhapandhal
Arcot Taluk
Vellore District.

3. The Principal District Judge
Co-operative Tribunal, Vellore District.

C.R.P.(NPD)No.2158 of 2012
and C.M.P.No.8292 of 2022

10.07.2023
(2/2)