



C.R.P.No.1941 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 26.04.2023

Delivered on 20.12.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1941 of 2020
and C.M.P.No.11951 of 2020

U.Natesan

...Petitioner/Appellant/Defendant

-Vs-

1.K.K.114 Ilakkiyampatti Primary
Agricultural Co-operative Bank
Rep. by its President,
Vennampatti, Collectorate Post,
Dharmapuri.

...Respondent/Respondent/Plaintiff

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

3.The Enquiry Officer,
O/o.The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri.

...Respondents/Respondents/Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, call for the records of the fair and decretal orders dated 13.02.2020 made in C.M.A.(C.S)No.1/2015 on the file of the Co-operative Societies Tribunal, (Principal District Judge) Dharmapuri, confirming the surcharge Award made in Na.Ka.No.1948/2011/Sa.Pa.2 dated 19.03.2015 on the file of the Deputy Registrar of Co-operative



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Societies, Dharmapuri Circle, Dharmapuri and set aside the same.

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For Petitioner : Mr.K.Ashok Kumar

For Respondents : Mr.P.Harish
Government Advocate

ORDER

This Civil Revision Petition is filed to set aside the orders dated 13.02.2020 made in C.M.A.(C.S)No.1/2015 on the file of the Co-operative Societies Tribunal, (Principal District Judge) Dharmapuri, confirming the surcharge Award made in Na.Ka.No.1948/2011/Sa.Pa.2 dated 19.03.2015, on the file of the Deputy Registrar of Co-operative Societies, Dharmapuri Circle, Dharmapuri.

2.Brief facts which are relevant to decide this Petition are as follows:-

The Petitioner was serving as Secretary at Ilakkiyampatti Primary Agricultural Co-Operative Bank. He retired from service in 2007. During the period 1991-2002, the Petitioner had disbursed loans to various members of the Ilakkiyampatti Primary Agricultural Co-Operative Bank. The departmental proceedings were initiated against him by issue of a



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Memo seeking explanation for his conduct in causing loss to the Society as per the Memo dated 20.02.2012. He had offered an explanation, stating that for the default committed by the persons who had availed loans, he had been a responsible officer of the Cooperative Society initiated steps to recover the money by issuing notices to the beneficiaries and following the procedures as per the Cooperative Societies Act. There are steps taken by him that have resulted in filing of the Execution Proceedings before the Civil Court and are pending. Also, as per Section 87 of the Cooperative Societies Act, surcharge proceedings cannot be initiated after a lapse of 7 years. The explanation offered by the petitioner to the show cause notice was not at all considered. The enquiry was held and the Petitioner was found guilty. Based on the report of the Inquiry Officer, the Surcharge Officer had initiated surcharge proceedings against the Petitioner. He had also not considered the explanation offered by the Petitioner. The Surcharge Officer had adopted the report of the Inquiry Officer and issued surcharge proceedings against the Petitioner. Aggrieved by the surcharge order passed by the Surcharge Officer, the Petitioner had filed Appeal before the Cooperative Societies Appellate Tribunal, the learned Principal District cum Sessions Judge, Dharmapuri by filing CMA. (C.S.) No.



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01/2015. The learned District Judge also did not consider the points raised by the Petitioner herein as Appellant. The Appeal was dismissed by order dated 13.12.2020. Aggrieved by the same, the Petitioner had filed this Civil Revision Petition.

3.The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner was serving as a Secretary of the K.K.114 Ilakkiyampatti Primary Agricultural Co-Operative Bank. He retired from service in 2007. During his service as Secretary of the said society, he disbursed loans to 57 beneficiaries.

4.The charge was initiated against him. The Petitioner retired in the year 2007. The surcharge proceedings were initiated in 2012, as per the chargesheet.

5.It is the case of the surcharge officer that the Petitioner, while serving as a secretary of the Ilakkiyampatti Primary Agricultural Co-Operative Bank from the year 1991 to the 2002 check period, had disbursed about 57 loans. He had not taken steps to recover the same, and



that is the charge.

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6.The Petitioner, as the Respondent in the inquiry, had submitted his reply, in which he stated that, as a responsible officer, he had initiated steps for the recovery of the loan by issuing notice and calling for the recovery of the amount. For the default of loan, the Petitioner as Secretary of the Society had initiated steps ending in execution proceedings, which are pending before the Civil Court. The details of the same are given on page 47, and the explanation of the Petitioner to the show cause notice is available on page 42 of the typed set furnished by the Petitioner. Further, it is submitted by the learned counsel for the Petitioner that the inquiry report of the inquiry officer under Section 81 was adopted by the surcharge officer without holding an independent inquiry under Section 87 of the Cooperative Societies Act. The further submission is that the explanation offered by the Petitioner is that, as per Section 87 of the Cooperative Societies Act, surcharge proceedings cannot be initiated after a 7-year period. For the relevant period from 1991 to 2002, surcharge proceedings had been initiated beyond the 7-year period. Therefore, the same is not sustainable in law.



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hereunder:

7. Section 87 of the Cooperative Societies Act is extracted as

“87. Surcharge. __ (1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the rules or the by – laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just: Provided that no action shall



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be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :

Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits; (d) requisitioning any public record from any court or office,

(e) issuing commission for examining of witnesses.”



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8.The said objection of the learned counsel for the Petitioner was not at all considered by the inquiry officer as well as the surcharge officer. Therefore, the Petitioner had filed an appeal before the Cooperative Societies Special Appellate Tribunal, the learned Principal District Judge, Dharmapuri.

9.The learned District Principal Judge, Dharmapuri had also discussed the points raised by the Petitioner, but in the conclusion paragraph of the judgement he had concluded that he had dismissed the appeal. Therefore, aggrieved by the fact that the surcharge proceedings initiated against the Petitioner as per Section 87 of the Cooperative Societies Act are not at all maintainable after a 7-year period and also that the execution petitions initiated by the Petitioner are pending before the Courts, the issue raised by the inquiry officer as well as the surcharge order of the surcharge officer is not at all maintainable. When the action taken by the Petitioner is pending before the Civil Court for realisation of the debts from the beneficiaries. Therefore, the dismissal of the statutory appeal by the Petitioner herein in CM. (C.S.) No. 01/2015 by order dated 13.12.2020 is to be set aside.



10.The written submission on behalf of the 1st Respondent was adopted by Respondents 2 and 3.

11.Mr.Harish, learned Government Advocate appearing for Respondents 1 to 3, submitted arguments by way of reply to the submission of the learned Counsel for the Revision Petitioner.

12.As per the facts of the case, the Revision Petitioner worked as Secretary under the 1st Respondent since 1978 and got retired in the year 2007. Being so, he has caused financial loss to the K.K.114 Ilakkiyampatti Primary Agricultural Co-operative Bank to a tune of Rs.14,87,420/- [Fourteen Lakhs Eighty Seven Thousand Four Hundred and Twenty Rupees only] between the period from 1991 to 2002. The Revision Petitioner had colluded with the erstwhile President of the Society and sanctioned some of the loans to their close relatives without following the guidelines, which are as follows:-

- i) *Bypassing the circular issued by the DR vide Na.Ka.No.17016/1997, dated 27.02.1997.*
- j) *Not followed bye-laws rule 33 and Tha.Ka.Mu.No.6545/2000 in issuance of loans.*



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k) *Even failed to initiate recovery proceeding as stipulated under Rule 69(15) of the Society bye-law.*

13.The above Act of the Revision Petitioner clearly attracts the provisions contemplated under Section 87 of the Tamil Nadu Co-operative Society Act, 1983. Section 87 of the Tamil Nadu Co-operative Society is reproduce verbatim hereunder:

“Surcharge :- (1) Where in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a society, it appears that any person who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society has or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the Rules or the bye-laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the Rules or the bye-laws as the Registrar or the person authorized as



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aforesaid thinks just”

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14.The Revision Petitioner was about to retire in the year 2007 and hence an undertaking letter was obtained stating that if there was any loss to the society caused by him, he could make good for the loss. After getting the letter, he was allowed to retire on 28.02.2007. However, the retirement order was not given to the Revision Petitioner and finally the retirement order dated 28.02.2007 was issued. Being so, the 2nd Respondent issued a communication dated 08.05.2007 directing the Petitioner to pay a sum of Rs.10,30,311.50/- being the monetary loss caused by the Petitioner to the Society. Subsequently another communication dated 08.06.2007 was issued by the 1st Respondent by which a sum of Rs.17,51,057.50 was directed to be deposited by the Petitioner.

15.The Revision Petitioner had filed Writ Petition for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the order dated 08.05.2007 and the consequential order dated 08.06.2007 vide W.P.No.22229/2007, on the grounds that there is no employer and employee relationship between the Revision Petitioner and the



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Respondents since he got retired. Whereas after elaborate discussion, the Court passed an order dated 12.07.2010, which is produced verbatim hereunder:-

“Learned Counsel relied upon a judgment of a Division Bench of the Hon'ble Court in MKS.Baasubramanian -Vs- he Kancheepuram Central Co-operative Bank Limited reported in 2010 (2) CTC 569 to press the point that the bank has got power to recover the loss caused to the bank. Mr.G.Ethirajalu learned Counsel for the Petitioner submitted that the Petitioner retired from service on 28.02.2007 and he is suffering without retirement benefits and therefore he cannot be proceed with against Section 87 of the Act. A Division Bench of this court in MKS.Balasubramanian -Vs- The Kancheepuram Central Co-operative Bank Limited reported in 2010 (2) CTC 569 after referring to the judgment of this Hon'ble Supreme Court in Uttarpradesh state sugar corporation limited and others -Vs- Kamal Swaroob Tondon 2008 (2) SCC 41 upheld the rights of the Society for initiation of surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act. As far as the loss sustained by the Society is concerned the right of the Society as stated above to proceed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 is recognised and settled. Therefore, it is open to the Respondent/Society to decide its course of action against the Petitioner”.

16.Subsequent to the above Writ Petition, enquiry under Section 81 was initiated by the 2nd Respondent to enquire about the poor progress in repayment of the consumer loans, vide proceedings Na.Ka.No.7792/2009, Tho.Va.2, dated 11.11.2009. The Special Officer started his enquiry on 12.01.2010 and completed his enquiry on 10.04.2010 and a detailed



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reported stating that a sum of Rs.14,87,420/- of loss was occurred to the society and that the Revision Petitioner along with the erstwhile President, is held liable for the loss that occurred to the society. In due course of the enquiry, the Revision Petitioner was put on notice and appeared on 29.03.2010 before the Enquiry Officer gave an irrelevant statement that was not required for the enquiry and sought adjournment. Later again, he was put on notice dated 30.03.2010 and 06.04.2010, he never turned up to appear before the Enquiry Officer.

17. Based on the enquiry report, the 2nd Respondent had initiated Section 87 proceeding vide Na.Ka.No.1948/2011 and enquiries were conducted on various dates such as 10.05.2012, 24.05.2012, 04.09.2014, 23.09.2014, 09.10.2014, 16.10.2014, 11.02.2015, 04.03.2015 and 19.03.2015. The Revision Petitioner was also put on notice and given sufficient opportunity.

18. At this juncture, the Revision Petitioner had filed another Writ Petition praying for issuance of a Writ of Mandamus, forbearing the 2nd Respondent from proceeding further in the enquiry in terms of the



proceedings made in Ref.No.Na.Ka.No.1948/2011, Sa.Pa.2, dated 10.05.2012 issued by the 2nd Respondent, without furnishing the documents, material and enquiry report to the Revision Petitioner in W.P.No.13639/2012, the order of this Hon'ble Court dated 10.07.2014 is produced verbatim hereunder:-

“During the course of the arguments, the learned Counsel for the Petitioner has submitted that since the surcharge proceeding under Section 87 of the Act is solely based on the enquiry report under Section 81 of the Act, based on which surcharge proceedings is initiated and the documents relied on in the enquiry report, to the Petitioner within a stipulated period. Further, he has submitted without furnishing the enquiry report, the 2nd Respondent cannot proceed further.

I am of the considered view that the principles of natural justice is requires the furnished of the report under Section 81 of the Act and the documents relied on them is to come to the adverse findings against the Petitioner, and the same shall be furnished to the Petitioner before proceedings with enquiry under Section 87 of the Act based on the report under Section 81 of the Act.

Accordingly this Writ Petition is disposed of by directing the 1st Respondent to furnish the report”.

19. Thereafter, by complying with the above order of this Court, Section 81 enquiry reports and documents were again circulated to the Revision Petitioner and the Revision Petitioner was held jointly and severally liable for the loss a sum of Rs.14,87,420/- occurred to the



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Respondent Society. Whereas the Revision Petitioner had given an undertaking at the time of retirement, admitting that he would make good that loss occurred to the society through his act. Being so, surcharge order was passed against the Revision Petitioner dated 19.03.2015, vide Na.Ka.No.1948/2011.

20.The Revision Petitioner had filed mandatory Appeal under Section 152 of the Act before the Special Tribunal for Co-operative Societies/Principal District Judge, Dharmapuri in CMA (CS) No.01/2015.

Whereas the Revision Petitioner had raised to major grounds:-

- i. Surcharge proceedings initiated is beyond the limitation period as stipulated in Section 87(1) of the Tamil Nadu Co-operative Societies Act.*
- ii. There is no wilful negligence on his part of the loss accrued to the society. Upon the contention the learned District Judge had framed issues.*
Whether the surcharge proceedings order against Appellant in Na.Ka.No.1948/2011 Sa.Pa.2, dated 19.03.2105 is sustainable or not?

21.The learned Trial Judge had rightly upheld that the surcharge proceedings were sustainable in all aspects.



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22.The finding of the Trial Court is produced verbatim hereunder:-

“A bare perusal of the said provision would show that mere negligence is not enough unless such negligence is also wilful. This issue has, in fact, already been dealt with by this on very many occasions. In a decision reported in 1999 (3) MLJ 310 (M.Sambandan -Vs- The Deputy Registrar Credit Co-operative Societies), this Court has categorically found that the act of failure to discharge the duties enjoined upon the Petitioner therein with regard to direct scrutiny of accounts, examination of vouchers and passing of statement before he signed the minutes book cannot come within the expression “wilful negligence”. This Court had in fact considered the scope the Section 71 of the Tamil Nadu Co-operative Societies Act, 1963 which is analogous to Section 87 of the present Act and after following various decisions, this Court has held at para 14 as follows:-

In the light of the above mentioned legal position, after considering the charges made against the Petitioner, I am unable to accept the conclusion arrived by the Respondents 1 to 3. It may be true that the Petitioner failed to discharge the duties enjoined upon him with regard to direct scrutiny of accounts, examination of vouchers and passing of statement before he signed the minutes book but this failure cannot come within the expression “wilful negligence” which has been constructed as either by commission/omission in a deliberate and reprehensible manner, with reckless callousness and with a supine indifference, without taking due care and precaution ordinarily expected from reasonable and prudent man under those existing circumstances”.

23.In the reported case **2009 (4) MLJ 992 K.Ajay Kumar Gosh -Vs-**



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Tribunal for Co-operative cases, Nagercoil, the Court held that “in the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, the Appellants 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 precaution ordinarily expected from reasonable and prudent man under those existing circumstances”. In the absence of such categorical findings by the Respondents, it is not possible to mulct the Appellants with the loss caused to the society.

24.The detailed discussion has been made by references to various judgment on this aspect in another judgment reported in ***Sathiyamangalam Co-operative Urban Bank Ltd. -Vs- Deputy Registrar of Co-operative Society and another, (1980) 2 MLJ 17***. It is held thus:-

“The decree negligence that is contemplated under Section 71(1) of the Tamil Nadu Co-operative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' as not been defined in the Act. 'Wilfulness' or 'Wantonness' imports pre-mediation or knowledge and consciousness that an injury or loss is likely to result from the Act done or from the omission to the Act. In imports a constructive intension has to the consequences which, entering into the wilful act, the law imputes to the offender and in his way a charge, which otherwise would be mere negligence, becomes by reason of a reckless this regard of



probably consequences, a will wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right has to implied bad faith. In examining whether there is wilful ness negligence it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss sustained.”

25.In this regard to the delay, it is contended that the irregularities were committed in the years 1991 to 2002, and the notice which was sent to the Revision Petitioner was 08.05.2007 and 08.06.2007. Subsequently, pending litigation, the Courts had given liberty to the society to proceed further with Section 87 of the Act, and hence the above surcharge proceeding is not barred by the limitation and still holds good. With intent to the above, the Trial Court had rightly upheld the following, which is produced verbatim hereunder:-

“On 11.01.2010 Dharmapuri Co-operative Deputy Registrar was ordered to Section 81 enquiry conducted and reported that Society bye-law and Co-operative proceedings were not followed and irregularities in granting of loan amount. The 1st Respondent issued a communication letter to pay the amount for the financial loss to the society. The 2nd Respondent has failed to note that all the loans are issued during the year 1991 – 2002 but surcharge proceedings under Section 87(1) of the Act was initiated only on 20.02.2021 nearly after the delay of 14 – 21 years which is clearly barred by limitation prescribed in the proviso Section 87(1) of the Act which reads as follows “Provided that no action shall be commenced under this sub section after the expiry of seven



years from the date of any act or omission referred to in the sub section. The Appellant was filed Writ Petition No.22229/2007 and 13639/2012 before this Hon'ble High Court of Madras and the Court was ordered to participate to Section 81 enquiry. The award was passed dated 19.03.2015 by the 2nd Respondent is not contrary to law. As per Section 87(1) Mandatory provision of the notice issued after seven years from the date alleged act commission and omission surcharge proceedings, and its Appellant who caused delay by not participating in the enquiry proceeding. The Appellant contention was not acceptable and not valid reason. The Appellant was retired in the year 2007. The Section 87 surcharge proceeding Appellant negligence in the part of the Secretary of the said society in his discharge duties was proved. ”

26.The enquiry under Section 81 enquiry and proceedings under Section 87(1) proceedings are very well within the limitation and till now holds good. Further, the Revision Petitioner contentions were defeated. Further, the Revision Petitioner cannot escape from the clutches of law on technical ground. Further, the loss which was occurred to the Society fund belongs to the public. Hence, the Revision Petitioner should be held liable jointly or severally .Hence this Petition lacks merit and is to be dismissed.

27.Point for consideration:

Whether the surcharge proceedings initiated against the Revision Petitioner dated 20.02.2012 is maintainable as per the Section 87(1) of the Tamil Nadu Co-operative Act, 1983?



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28. On consideration of the rival submission, on perusal of the reported decision relied on by both parties and in the light of the surcharge order passed by the 2nd Respondent/Deputy Registrar of Co-operative Societies, Dharmapuri Circle, Dharmapuri. The proceeding was initiated on 20.02.2012 i.e. 10 years after the grant of loans. Till 2007, the Petitioner was secretary of the 1st Respondent's Society.

29. As per Section 87(1) of the Tamil Nadu Co-operative Society Act, after 7 years from the date of admission, surcharge proceeding cannot be initiated. As per Section 87(1) of the Tamil Nadu Co-operative Society Act, it is very clear that proceedings can be initiated provided it is wilful negligence; it has to be established either by enquiry or by surcharge authority.

30. As per the show cause notice, 87 loans have been disbursed in the relevant period.

31. As per the explanation offered by the Revision Petitioner as



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Secretary of the 1st Respondent Co-operative Society. He had initiated steps for recovery of the 57 loans. In some cases, he had obtained a decree from the competent Civil Court and proceeded against the Respondents beneficiaries of the loan through the Court of law. After grant of decree by the Civil Court, the Petitioner had engaged Counsel to protect the interests of the Society through the Counsel of the 1st Respondent's Society, who had raised Execution Petition which is pending before the concerned Executing Court for which the Petitioner cannot be held liable. He had taken all measures to recover the amount from the persons who had obtained loan from the 1st Respondent Society. Therefore, the allegation that the Petitioner herein as Secretary of the Society, had not taken effective steps to recover the loan will not hold good.

32.The learned Principal District Judge, Dharmapuri, who is the Statutory Appellate Authority under the Co-operative Societies had in his judgment dismissing the CMA.CS No.01 of 2020 had held as follows:-

“On 11.01.2010, Dharmapuri Co-operative Deputy Registrar was ordered to Section 81 enquiry conducted and reported that Society bye-law and Co-operative Society proceedings were not followed and irregularities in granting of the loan amount. The 1st Respondent issued a communication letter to pay the amount for financial loss



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of the society. The 2nd Respondent has failed to note that all the loans are issued during the year 1991 to 2002 but surcharge proceedings under Section 87(1) of the Tamil Nadu Co-operative Societies Act was initiated only on 20.02.2012 nearly after the delay of 14 to 21 years which is clearly barred by a limitation prescribed in the proviso to Section 87(1) of the Act which reads as follows “Provided that no action shall be commenced under this sub section after the expiry of 7 years from the date of any Act or omission referred to in this sub-section. The Appellant was filed Writ Petition No.13639 of 2012 before the Hon'ble High Court was ordered to participated to Section 81 enquiry. The award was passed dated 19.03.2015 by the 2nd Respondent is not contrary to law. As per Section 87(1) mandatory provision of the notice issued after 7 years from the date of alleged act commissioner omission surcharge proceedings, the appellant was delay in not participated the enquiry proceedings. The appellant contention was not acceptable and not valid reason. The appellant was retired in the year of 2007. The Section 87 surcharge proceedings appellant negligence on the part of the Secretary of the said society in his discharge duties was proved and has not taken necessary steps as per bye-law 69(15) also proved.

M.K.S.Balasubramanian -Vs- Kanchipuram Central Co-operative Bank Ltd., 2010 (3) MLJ 429 – Disciplinary proceedings against the servants of the Co-operative society cannot be initiated after his retirement for the loss caused through the society. However, surcharge proceedings can be initiated under Section 87 for the alleged loss.

14. *The Appellant is intentionally, wantonly and knowingly issued the loans to several persons and due to negligence of his duties, the society met on financial loss and has not taken any steps to recover the debts.*

15. *Under all above said aspects this Court comes to conclusion this Appeal is not allowed. The 2nd Respondent passed surcharge proceedings order in Na.Ka.No.1948/2011 Sa.Pa.2 dated 19.03.2015 is confirmed.*

16. *In the result this Appeal is dismissed.”*



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33.The Revision Petitioner herein had taken all steps for recovery of the loan, the steps taken by the Revision Petitioner are pending before the Civil Courts for the execution of the decree. Therefore, the allegation that Petitioner herein colluded with then President and thereby caused loss to the Society will not hold good. The learned Principal District Judge, Dharmapuri, had not at all considered the fact that enquiry under Section 81 was initiated after 7 years from the date of the loans disbursed by the Petitioner, for which the Authorities under the Co-operative Societies Act cannot initiate any steps. Only the steps initiated by the Secretary had followed, in filing of Execution Petitions.

34.Execution Petitions are to be disposed of by the learned Sub Judge having jurisdiction. Due to the delay in execution proceedings, the Petitioner cannot be held liable or held responsible.

35.On perusal of the surcharge proceedings and the order passed by the learned Principal District Judge, Dharmapuri, the reasons set out by the learned Appellate Judge under the Tamil Nadu Co-operative Societies Act cannot at all be accepted as he had ignored the contention of the



Respondents. After 7 years, after grant of loans, the same cannot be held liable. In short, as per Section 89 of the Tamil Nadu Co-operative Societies Act, the surcharge proceedings itself is not maintainable, and the cause of action is prior to 7 years from the date of said grant of loans. Therefore, the surcharge proceedings initiated on the basis of the letter given by the retiring officer/staff of the Co-operative Bank stating that they are liable to any amount that was considered as causing loss to the 1st Respondent Society cannot be taken advantage by the Surcharge Officer for initiating surcharge proceedings based on the mandatory provision of getting a letter from the individual concerned who served as Secretary of the Society.

36. In the light of the reported judgment in **2009 (4) MLJ 992 K.Ajay Kumar Gosh -Vs- Tribunal for Co-operative cases, Nagercoil**, and **Sathiyamangalam Co-operative Urban Bank Ltd. -Vs- Deputy Registrar of Co-operative Society and another, (1980) 2 MLJ 17** and in the light of Section 87 of the Tamil Nadu Co-operative Societies Act, the judgment of the learned Principal District Judge, Dharmapuri, in dismissing CMA.C.S.No.01/2022 is found unreasonable and perverse.



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37.In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondents.

The surcharge proceedings initiated against the Revision Petitioner dated 20.02.2012 is not maintainable as per the Section 87(1) of the Tamil Nadu Co-operative Act, 1983

In the result, the **Civil Revision Petition is allowed**. The order dated 13.02.2020 made in C.M.A.(C.S)No.1/2015 on the file of the Co-operative Societies Tribunal, (Principal District Judge) Dharmapuri, confirming the surcharge Award made in Na.Ka.No.1948/2011/Sa.Pa.2 dated 19.03.2015 on the file of the Deputy Registrar of Co-operative Societies, Dharmapuri Circle, Dharmapuri, are set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.12.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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To

1. The Co-operative Societies Tribunal,
(Principal District Judge) Dharmapuri,
- 2.The President,
K.K.114 Ilakkiyampatti Primary
Agricultural Co-operative Bank
Vennampatti, Collectorate Post,
Dharmapuri.
- 3.The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle, Dharmapuri.
- 4.The Enquiry Officer,
O/o.The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri.



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