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CRP. No.2538 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 2538 of 2017

E.M.Sekar

...Petitioner

Vs.

- 1.The special officer,
K.K. 162. N.S. Reddiyur Primary Agricultural Co-operative Bank,
Dharmapuri Taluk & District.
2. The Deputy Registrar of Co-operative Societies,
Dharmapuri,Dharmapuri District.

...Respondents.

PRAYER : This Civil Revision Petition is filed under Section 227 of CPC, to set aside the judgment and decree dated 05.06.2017 made in C.M.A (C.S) No.6 of 2012 on the file of Co-operative Cases Appellate Tribunal(Principal District Court), Dharmapuri, confirming the award of the 2nd respondent in surcharge order in Na.Ka. No. 7345/2010/sa.pa.2 dated 05.06.2017.

For Petitioner : Mr.G.Arulmurugan

For R1 : Mr.M.S.Palaniswamy

For R2 : Dr.S.Suriya



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ORDER

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2.The brief facts of the case is as follows:

The petitioner herein served as a Secretary in Rediyur Co-operative bank for the year 2005-2006. Thereafter, audit was conducted for the above period and found that the petitioner misused a sum of Rs.91,107,10/- from the society while he was working as a secretary. Thereafter, the second respondent initiated surcharge proceedings against the petitioner on 10.10.2021. Against which, the petitioner preferred an appeal before the Principal District Judge, Dharmapuri, after considering submissions on either side the Court below dismissed the appeal. Aggrieved over the same the petitioner preferred this Civil Revision Petition.

3. The learned counsel for the petitioner submitted that the lower Court failed to take note of the fact that the Audit report relied by the the respondent society for the year 2004 to 2006 in which charges pertains to



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entries made in the year 2004 but the proceedings were initiated only in the year of 2011 which is beyond the time limit as prescribed under Section 87 of Co-operative Societies Act("in short Act"), as such is invalid and liable to be set aside. Further, he argued that as per Section 87 of the said Act order should be passed within six months from the date of the commencement of proceedings but final order passed after six months which is beyond the prescribed period of six months which has not been appreciated by the Court below. Further, he argued that even as per Section 80(8) of the Act notice should be given to the petitioner but the respondent prepared report unanimously against the petitioner without giving proper opportunity. Further, he submitted that alleged loss claimed based on the report dated 09.08.2010 which was submitted after four months by referring to xerox copies of the book entries and registries without verifying any of the original records as such is clearly indication of malafide intention fasten the liability on the petitioner but the same was not properly appreciated by the Trial Court. It was submitted that without furnishing copy of the enquiry report proceedings was initiated against the petitioner as such is unfair and liable to be set aside but the Trial Court failed to take note of the fact. Hence he pray to allow this petition.



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4. By way of reply, the learned counsel for the respondents submitted that before initiating surcharge proceedings notice was issued to the petitioner on 14.02.2011 calling for explanation after receiving the same he has not replied. Thereafter, the respondent issued summons to the petitioner on 29.07.2011 and directing him to appear for enquiry on 08.08.2011 but he was not appeared again summons issued on 11.08.2011 and directing him to appear on 24.08.2011 after getting the same the petitioner made an written representation by sending the register post claiming the particulars of the record and also raised objections with regard to attachment of his savings bank account by the respondents. In the meanwhile, he preferred writ petition before this Court seeking to set aside the impugned order dated 17.02.2011 in respect of attachment order of saving bank account after considering the submissions on either side this Court set aside the impugned order and also permitted the respondents to initiate proceedings as per provision under Section 87 of the Act. Thereafter, second respondent issued notice to the petitioner calling him to appear for enquiry after receiving two notice the petitioner thereafter through letter dated 24.08.2011 the petitioner sought for records from the respondent related to the allegation against him



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and also raised objection that he has not committed any misappropriation as claimed by them. Thereafter, the Second respondent issued reply to the petitioner's letter dated 26.08.2011 and permitting him to peruse the records directly in the register office on 05.09.2011. After perusing the records the petitioner requested the copy of the documents for which the respondent requested him to pay sufficient charges to take copy of that documents but he was obtained that documents. Thereafter he was called upon for the enquiry on 14.09.2011 but on that date he gave reply that he was unable to appear for enquiry due to viral fever. Again on 26.11.2011 the petitioner gave reply stating that sufficient time was not granted to him so he was not appeared for enquiry and claiming the proceedings as biased thereafter based on the available records surcharge proceedings and final report was passed under Section 87 of the Act based on the documents. Hence the sufficient opportunity was given to the petitioner but he was not appeared for enquiry nor paid charge to get copy of the related documents which was rightly appreciated by the Court below which needs no interference.



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5. Considering the submissions on either side, it reveals that in the year 2010 based on the audit report the second respondent issued surcharge notice to the petitioner on 04.04.2011 on receipt of the said notice the petitioner sent reply and also sought time to submit his reply to the said report. Thereafter, he sought copy of the said document, for which, the respondent permitted him to peruse the documents in office and necessitate him to pay charges for the copy of the document because the enquiry report contains 21,000/- pages but the petitioner not paid. On the other hand, he remains absent for the enquiry proceedings. Thereafter, based on the available records the second respondent passed surcharge order on 10.10.2011. So far sufficient opportunity was given to the petitioner by the respondent but the same petitioner was not appeared for enquiry and gave a reply that he was suffered with viral fever but there is no medical proof to that effect the Court below rightly appreciated the conduct of the petitioner. Furthermore, as discussed above, the entire facts reveals that sufficient time and opportunities was given to the petitioner but the petitioner has not availed those opportunities and keeping himself away from the proceedings purposely with malafide intention. Hence, this Court doest not find any infirmity in the order of the Court below. Accordingly, this Civil revision



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petition is dismissed as no merits. No cost. Consequentially, connected
miscellaneous petition is closed.

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