



C.R.P(MD)Nos.1001 to 1003 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On:04.12.2023 Pronounced on: 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)Nos.1001 to 1003 of 2019

and

C.M.P(MD)Nos.5574, 5575 & 5576 of 2019

C.R.P(MD)No.1001 of 2019

V.Srinivasan (Died)

...1st Appellant
in all the CRPs

1.Balaji

2.Shanthi

3.Rajalakshmi

...Petitioners/Appellants 2 to 4
in all the CRPs

vs.

1.The Deputy Registrar,
Office of Deputy Registrar of Co-operative Societies,
30, 3rd Cross Street, Perumalpuram,
Tirunelveli-627 007.

2.The Special Officer,
T.T.13, Tamilnadu State Transport Corporation,
(Madurai Division II),
Employees Thrift and Credit Society,
Vannarpettai, Tirunelveli.

... Respondents/Respondents
in all the CRPs



C.R.P(MD)Nos.1001 to 1003 of 2019

PRAYER in C.R.P(MD)No.1001 of 2019: Civil Revision Petition filed under Section 227 of Constitution of India, against the fair and decreetal order passed in CS.C.M.A.No.21 of 2011 on the file of the Principal District Court, Tirunelveli dated 23.10.2017.

PRAYER in C.R.P(MD)No.1002 of 2019: Civil Revision Petition filed under Section 227 of Constitution of India, against the fair and decreetal order passed in CS.C.M.A.No.25 of 2011 on the file of the Principal District Court, Tirunelveli dated 23.10.2017.

PRAYER in C.R.P(MD)No.1003 of 2019: Civil Revision Petition filed under Section 227 of Constitution of India, against the fair and decreetal order passed in CS.C.M.A.No.26 of 2011 on the file of the Principal District Court, Tirunelveli dated 23.10.2017.

For Petitioners	:Mr.H.Arumugam
in all the cases	
For R1	:Mr.A.Baskaran
in all the cases	Additional Government Pleader
For R2	:No appearance
in all the cases	



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COMMON ORDER

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The petitioners in all the revisions are the legal heirs of the first appellant, the deceased V.Srinivasan, who was working as Secretary of the Tamil Nadu State Transport Corporation, (Madurai Division II), Employees Thrift and Credit Society, Vannarpettai, Tirunelveli. For the irregularities in his functioning, proceedings were initiated and enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was undertaken. The Enquiry Officer submitted his report stating that several loan transactions were allowed to lapse and the first appellant was cause for such loss and therefore, recommended to initiate surcharge proceedings against him.

2. In furtherance of the above report of the Enquiry Officer, surcharge proceedings were initiated and in respect of certain items, the first appellant was directed to compensate the loss said to have been caused to the society.

3. Aggrieved by the said surcharge proceedings, the first appellant approached the Tribunal. The Tribunal has confirmed the surcharge



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proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, as against which, the present Civil Revision Petitions have been preferred.

4. The main ground of challenge to the order of the Tribunal is that the Tribunal has failed to taken into consideration the fact that there was no willful negligence on the part of the deceased employee (first appellant before the Tribunal) and that there was ample scope for recovery of the arrears and in such circumstances, the liability could not have been fastened on the first appellant's shoulder.

5. I have heard Mr.H.Arumugam, learned counsel appearing for the petitioners, who are the legal heirs of the deceased V.Srinivasan, and Mr.A.Baskaran, learned Additional Government Pleader appearing for the first respondent. I have also gone through the records and the impugned judgments of the Tribunal.

6. It is not in dispute that the deceased V.Srinivasan was a Secretary with the Society from the year 1988. Only in the year 2010 i.e., after lapse of more than 20 years, for the first time, an inquiry was



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ordered under Section 81 of the Tamil Nadu Co-operative Societies Act and even though, huge amounts were originally claimed to have been lost on account of the negligence of the said Srinivasan, ultimately, it was found that in respect of C.R.P.No.1001/2009, though a sum of Rs.25,96,934/- was the alleged loss, the findings of the Enquiry Officer which consequently resulted in levy of surcharge proceedings was only pertaining to Rs.23,120/-. Similarly, in case of C.R.P.(MD)No.1002 of 2019 the initial amount alleged to have been lost by the society, on account of the deceased negligence, was claimed to be a sum of Rs. 18,47,670/-. However, subsequently, on enquiry, it was found that the amount was Rs.7,39,805/-. Insofar as C.R.P.(MD)No.1003 of 2009 is concerned, the amount alleged to have been lost, on account of the negligence of the deceased Srinivasan, was claimed to be a sum of Rs.1,51,179/-, subsequently, on enquiry, it was found that the amount of Rs.3,33,493/- was the loss caused to the society. However, insofar as all other items, the deceased Srinivasan was exonerated, the findings of the Enquiry Officer as well as the Tribunal being that he was not cause for the loss and more over, more than 7 years had lapsed and recovery could not be made.



7. Admittedly, before the surcharge proceedings came to be passed by the first respondent / the Deputy Registrar. he has drawn up the detailed tabular column to highlight the different items in respect of which surcharge proceedings were initiated and the first appellant's explanation has also been recorded. I am unable to see from the said tabular column that the first respondent has been able to establish any willful negligence on the part of the deceased Srinivasan, in order to fix the liability on him.

8. Further, the arguments of the learned counsel for the revision petitioners are that the right to recover the amounts due has not been foreclosed, for the reasons that the benefits payable to the defaulters and also the guarantors, who stood as sureties, has not been released by the society and therefore, the amounts due and payable by the defaulters can always be adjusted from and out of the amounts to be paid to the said defaulters and also from the guarantors, who stood as sureties for said defaulters.

9. The learned counsel for the appellant would also placed reliance on the decision of this Court in ***Vishwakarma Nager Coop Building***



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Society Ltd., Trichy and others vs. The District Judge cum Cooperative

Tribunal, Tiruchirappalli and others reported in ***2017 (0) Supreme***

***(Mad)* 3634**. In the said decision, this Court has held that the surcharge proceedings cannot be initiated, when there are other remedies available for the society to recover the loan amount from the loanees. In the cases on hand also, it is an admitted position that the benefits payable to the loanees have not been settled and there is every opportunity for the society to adjust the money due, from and out of the money payable to the loanees and their guarantors. More over, having found that the deceased V.Srinivasan was not responsible for the losses caused to the society on several other accounts, while exonerating him, the first respondent as well as the Tribunal ought not to have adopted a different yardstick and come to a conclusion that in respect of some of the transactions, the deceased was liable and in respect of some of the transactions which stood on very similar footing, he is not liable and entitled to be exonerated. The Tribunal has also merely found that the explanation of the deceased first appellant regarding possibility of recovery of amount was not acceptable by the first respondent as the same was barred by limitation. Therefore, the Tribunal proceeded to confirm the findings of the first respondent. However, it is an admitted



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fact that even pending CMA, there have been recoveries made in respect of the amounts due and payable to the society.

10. In fact the learned counsel for the first respondent has submitted a communication dated 31.10.2023 addressed to him from the first respondent setting out the amounts payable as on date, together with interest. It is seen from the said communication that even as late as on 21.07.2019 in C.R.P.(MD)No.1002/2019 and pending C.M.A., in C.R.P(MD)No.1003 of 2019, amounts have been recovered from the defaulters. This only go to show that the contention of the revision petitioners that the amounts cannot be said to have been lost, once and for all for the society, can be accepted. More over, it is one thing to say that the amounts are not recoverable by initiation of the proceedings as being time barred, but totally a different thing altogether to state that the amounts cannot be even adjusted from and out of the amounts payable to the loanees / their guarantors. The findings of the first respondent also do not indicate that there has been a gross or wilful negligence or inaction on the part of the deceased which has resulted in alleged loss to the society.



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11. Unless there is a categorical finding based on evidence that the delinquent officer is guilty of willful negligence, then alone, the proceedings for surcharge can be initiated and proceeded as against such delinquent officer. However, in the instant case, I do not find any such material or finding arrived at by the first respondent in order to fix the liability on the deceased Srinivasan.

12. On the contrary, I find from the tabular column, which has been prepared by the first respondent that, even the employer has admitted that the steps were being taken to recover the loans under Ex.P9. This fact has been set forth in an abundantly clear manner. More over, even under Section 90(9) of the Co-operative Societies Act, a dispute can be raised before the Registrar of Co-operative Societies, even after the period of limitation and therefore, it cannot be said that the society has become toothless to recover the amounts due to it.

13. Explanation to Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, clarifies that the dispute referred to in Section 90 would also include a claim by a registered society for any debt or demand



due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not.

14. Section 90(9)(a) and Section 90(9)(b) stipulate that notwithstanding the law of limitation, the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

15. From the above, I do not see any justifiable ground to fasten the liability on the delinquent officer Late.V.Srinivasan. Further, from the fact that the first respondent has exonerated the deceased delinquent officer in respect of several other items, which also did not stand on any different footing would also only go to show that there could not have been any gross negligence on the part of the delinquent officer. Unfortunately, the Tribunal has proceeded to confirm the order of the first respondent without any independent assessment of the oral and documentary evidence adduced by the parties and has also not



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appreciated the legal contentions put forth by the revision petitioners that the amounts were still recoverable and the law of limitation was not an absolute bar in that regard. In fine, I am inclined to allow all the revision petitions.

16. Accordingly, all the revision petitions are allowed and the orders and decreetal orders passed in C.M.A.No.21 of 2011, C.M.A.No. 25 of 2011 and C.M.A.No.26 of 2011 by the Principal District Court, Tirunelveli, dated 23.10.2017 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
AM

08.12.2023

To

1. The Principal District Court,
Tirunelveli.
2. The Deputy Registrar,
Office of Deputy Registrar of Co-operative Societies,
30, 3rd Cross Street, Perumalpuram,
Tirunelveli-627 007.



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P.B.BALAJI,J.

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