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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.08.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1312 of 2014
and
M.P.(MD)No.1 of 2014
and
C.M.P.(MD)No.8732 of 2022

1.Maria Arputham
2.L.Jani Anparasu
3.Latheesh-J-Lal ...Appellants

/Vs./

- 1.The Special Officer/Secretary,
Moonchirai Co-operative Primary Agriculture and
Rural Development Bank Ltd.,
Marthandam, Kanyakumari District.
- 2.The Co-operative Tribunal/District Court,
Kanyakumari at Nagercoil,
Kanyakumari District.
- 3.Kanyakumari District,
Central Co-operative Bank,
Nagercoil,
Kanyakumari District.



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4.The Joint Registrar of
Co-operative Societies,
Nagercoil,
Kanyakumari District.

5.The Deputy Registrar of
Co-operative Societies,
Thuckalay,
Kanyakumari District.

6.The Sale Officer,
Co-operative Deputy Registrar Office,
Thuckalay,
Kanyakumari District.

7.The Registrar (Co-operative Societies),
Kilpauk,
Chennai-10.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of the Letter Patent Act,
to set aside the order dated 21.07.2014 made in W.P.(MD)No.14150 of
2011 on the file of this Court.

For Appellants	: Mr.S.Vashik Ali for Mr.K.Sree Kumaran Nair
For R2 to R7	: Mr.K.S.Selvaganesan Additional Government Pleader
For R1	: Ms.B.Gayathri for Ms.J.Anandavalli



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JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH , J.**)

One Lawrance (in short 'employee') has been employed as Secretary in charge of Moonchirai Co-operative Primary Agriculture Rural Development Bank Limited at Marthandam, (in short 'Bank'). While so, he had disbursed certain loans in the year 2001 according to sanctions on 17.03.2001 and 31.03.2001. The disbursements came under the scanner of the bank in 2009 and the Bank proposed enquiry into the same. While so, the employee had passed away on 10.08.2006 and hence, the enquiry had, in effect, been conducted as against a deceased person.

2. The enquiry commenced in the year 2009 and concluded with report dated 08.05.2009. Pending further proceedings, his properties were subject to an order of conditional attachment on 20.03.2009. The order of attachment was served on the legal heirs of said employee on 21.03.2009.



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3. The legal heirs challenged the coercive recovery proceedings before the Co-operative Tribunal / District Court at Nagercoil and the Tribunal passed an order dated 13.08.2010 in C.M.A.No.10 of 2009 to the effect that their contentions were well placed. Their specific contention had been to the effect that no enquiry could have taken place post the demise of the employee concerned and hence, any consequence of the same, including the impugned attachment, was also illegal.

4.Challenging the order passed by the Tribunal, W.P.(MD)No. 14150 of 2011 had come to be filed by the Bank seeking quash of the order passed by the Tribunal on 13.08.2010. That writ petition was allowed, the Writ Court being of the view that despite the demise of the employee as early as on 10.08.2005, there was nothing that stood in the way of proceedings being taken under the provisions of the Tamil Nadu Cooperative Societies Act, 1983 (in short 'Act') as per statute.

5.A distinction was noted as between disciplinary proceedings abating with demise of the employee, but sufficient statutory sanction being available for continuance of proceedings for levy of surcharge. In



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fine, it was directed by the writ Court that the District Registrar could proceed with enquiry under Section 87 of the Act and pass orders within the time frame that was fixed.

6. As against that order, the legal heirs of the employee are in appeal before us. They would submit that in this case, enquiry had itself been undertaken post demise of the employee. There was no justification, legally or otherwise, for any proceedings to have been initiated pursuant to an employee's demise. The statutory scheme for levy of surcharge contemplates sufficient opportunity to be granted to the employer to make submissions in his defence and since the employee had passed away in 2005, nothing survives as far as the issue identified by the Bank for enquiry was concerned.

7. Per contra, our attention has drawn to the provisions of Sections 81 and 87 of Act, that provide for enquiry and levy of surcharge, pointing out that the statutory scheme enabled the authorities to proceed with the matter even in case of demise of the employee.



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8. Having heard the learned counsel on either side, we are of the view that the order of the Writ Court requires re-consideration. Section 81 provides for enquiry in respect of alleged misappropriation, fraudulent retention of money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of working of that society. Needless to say, such enquiry could be conducted only in the context of that employee continue in employment of the society concerned and thus on the demise of the particular employee, all cause of action as against that employee would cease.

9. Further, the examination into whether the employee has engaged in acts of dereliction of duty or other lapses leading to loss suffered by the Society can also be decided only after hearing the employee concerned and his version of events/his defence. In the present case, enquiry has been commenced in February 2009 concluding with the order of attachment dated 20.03.2009, whereas the employee has himself passed away in 2005. We are of the view that with his demise, all cause for enquiry into any allegations in regard to his service would come to a standstill.



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10. That apart, the direction of the learned Judge is specific to the effect that the authorities can proceed with enquiry under Section 87 of the Act. Such proceedings for levy of surcharge are only in consequence of enquiry undertaken under Section 81 of the Act. In fact it is mandatory that the copy of enquiry report under Section 81 be furnished to the noticee, charges framed relating specifically to the delinquent employee, and a show cause notice issued to him soliciting his defence.

11. The employee in question has passed away in 2005. The question of the legal heirs responding to the charges or show cause notice does not arise as they would be wholly unaware of the actions of the employee in his official capacity. They are also not expected to be in possession of official documents and details of matters concerning the Bank to offer any explanation / defence on his behalf, let alone, an informed explanation.

12. Hence, it is only after an order levying surcharge under Section 87 has been passed after hearing the employee that it would bear any



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consequence at all. That is to say, it is only once the surcharge has been quantified by the authorities by way of an order under Section 87, is it permissible for authorities to take action as against the legal heirs for recovery of the amount determined.

13. In light of the discussion as above, the appellants succeed and this writ appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[A.S.M.J.] & [R.V.J.]
08.08.2023

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

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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
W.A.(MD)No.1312 of 2014

Dated:
08.08.2023