



C.R.P(MD)Nos.604 & 1549 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.09.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)Nos.604 & 1549 of 2015

1.C.R.P(MD)No.604 of 2015:-

A.Kartheesan ... Petitioner/Appellant/1st Respondent

Vs.

1.The Deputy Registrar of Co-operative Societies,
Perumalpuram,
Tirunelveli – 627 007. ... 1st Respondents/1st Respondent/
Plaintiff

2.H.Ganesan
3.S.S.Rajeshwari
4.T.S.Muthiah
5.R.Mariappan
6.E.Sankaran
7.G.Sugumaran
8.S.Chandran
9.S.Paranjothi
10.J.Angel Vijaya Nirmala
11.P.Sivagami

... Respondents 2 to 11/
Respondents/Respondents



C.R.P(MD)Nos.604 & 1549 of 2015

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the orders passed in C.M.A.CS.No.8 of 2009 dated 08.12.2014 on the file of the learned Principal District Judge, Tirunelveli, in confirming the surcharge case No.15 of 2003-04 dated 30.12.2008 on the file of the first respondent.

For Petitioner : Mr.K.R.Laxman
For R – 1 : Mr.J.Gunaseelan Muthiah
For R – 3 : Mr.D.Venkatesh
For RR 4 to 6 & 8 to 11: Mr.S.Seenivasagam
For R – 7 : No appearance

2.C.R.P(MD)No.1549 of 2015:-

S.S.Rajeswari ... Petitioner/Appellant/3rd Respondent

Vs.

- 1.The Deputy Registrar of Co-operative Societies,
Perumalpuram,
Tirunelveli – 627 007.
- 2.The Special Officer,
A-237, Tirunelveli District General Employees
Co-operative Thrift and Credit Society Limited,
Kokkirakulam,
Tirunelveli – 9.
- 3.A.Kartheesan
- 4.H.Ganesan
- 5.T.S.Muthiah
- 6.R.Mariappan

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7.E.Sankaran
8.G.Sugumaran
9.S.Chandran
10.S.Paranjothi
11.J.Angel Vijaya Nirmala
12.P.Sivagami

... Respondents/
Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the orders passed in C.M.A.CS.No.9 of 2009 dated 08.12.2014 on the file of the learned Principal District Judge, Tirunelveli, in confirming the surcharge case No.15 of 2003-04 dated 30.12.2008 by the Deputy Registrar of Co-operative Societies, Tirunelveli.

For Petitioner	: Mr.D.Venkatesh
For RR 1 & 3	: No appearance
For R – 2	: Mr.M.Senthil Ayyanar Government Advocate
For RR 5 to 7, 9 to 12	: Mr.S.Seenivasgam
For R – 8	: Mr.K.R.Laxman

COMMON ORDER

These Civil Revision Petitions have been filed by the revision petitioners to set aside the orders passed in C.M.A.CS.Nos.8 and 9 of 2009, dated 08.12.2014 on the file of the learned Principal District Judge, Tirunelveli, confirming the surcharge case No.15 of



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2003-04 dated 30.12.2008 by the Deputy Registrar of Co-operative Societies, Tirunelveli.

2.For the sake of convenience, the parties are referred to as their rank in surcharge case No.15 of 2003-04.

3.The Plaintiff/Deputy Registrar, Co-operative Societies initiated surcharge proceedings in S.C.No.15/2003-2004 as against the first defendant and 11 others and held that the first defendant along with 4, 5, 7, 8, 9, 10, 11 and 12 defendants have misappropriated an amount to a tune of Rs.58,47,600/-, 1, 2, 4, 5, 7, 8, 9, 10, 11 and 12 defendants to the tune of Rs.53,00,000/-, 1, 2 and 3 defendants to the tune of Rs.9,54,000/- and 1 and 3 defendants to the tune of Rs.27,16,000/- and in total to the tune of Rs.1,00,47,600/- are liable to pay with prevailing interest to the Societies.

4.Aggrieved by the order passed by the plaintiff, the first defendant/Kartheesan preferred C.M.A(CS)No.8 of 2009 and the third defendant/S.S.Rajeswari preferred C.M.A(CS)No.9 of 2009 on the file of the Principal District Court, Tirunelveli. The said C.M.A(CS)Nos.8 and 9 of 2009 were dismissed, confirming the order of the plaintiff.

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5.Challenging the order passed in C.M.A(CS)No.8 of 2009, the first defendant/Kartheesan preferred C.R.P(MD)No.604 of 2015 and the order passed in C.M.A(CS)No.9 of 2009, the third defendant/S.S.Rajeswari preferred C.R.P(MD)No.4549 of 2015.

6.The case of the first defendant/revision petitioner in C.R.P(MD)No.604 of 2015 is as follows:-

6.1.The first defendant was serving as a Clerk in A.237, Tirunelveli District General Employees Co-operative Thrift and Credit Society Limited, Kokkirakulam, Tirunelveli and at no point of time, he worked as a Secretary. There is no Secretary post in the bye-laws of the aforesaid Society. By all means, there was no sanction for the post of Secretary in the Society by the order of the Joint Registrar of the Co-operative Societies. On the basis of Section 81 enquiry, which was initiated as against the first defendant surcharge proceedings under Section 87 were also initiated as against the first defendant, wherein the charges as against him were that while he was working as a Secretary in the Co-operative Thrift and Credit Society Limited, Kokkirakulam, he along with 11 other persons had misappropriated several amounts to the tune of Rs.1,00,47,500/-. As such under



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Section 81 enquiry, he was found to be guilty of committing such misappropriation, as a result of which, Section 87 proceedings were also initiated along with others fastening liability on the first defendant. Without considering the fact that as per the bye-laws, no Secretary post was mandated and when the first defendant worked as a Clerk, the surcharge proceedings proceeded against the first defendant as the Secretary of the aforesaid Co-operative Thrift and Credit Society Limited, Kokkirakulam. The Deputy Registrar did not give sufficient opportunity to cross-examine the enquiry officer, on whose report Section 87 surcharge proceedings were initiated. In the absence of the findings of the enquiry officer that the first defendant had been wilfully negligent in performing his duty to attract wilful negligence, misappropriation or guilt on breach of trust or causing any deficiency in the assets of the Society by breach of trust, the plaintiff had no jurisdiction, power and authority under Section 87 to initiate surcharge proceedings against the first defendant. While the first defendant actually served as a Clerk, wherein all the other persons against whom surcharge proceedings were initiated along with the first defendant were superior officers, there is no probability of incurring any loss to the said Society on the instance of the first defendant, since he worked under the dictations of the other persons.

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6.2. That apart, the surcharge proceedings were not completed within the stipulated period of time and the entire proceedings are vitiated by the enormous delay in completion of the said proceedings. The allegation that the amount disbursed from the Central Co-operative Bank has not been credited in the accounts of the beneficiaries and certain amounts have not been credited in the accounts of the Central Co-operative Bank despite the first defendant duly producing several receipts, endorsing the payment in the appropriate accounts, the said point was not properly evaluated by the plaintiff. In total when there is no record to the effect that the first defendant worked as a Secretary and when there was no post of Secretary at all in the said Society, repeatedly alleging the roles of the Secretary upon the first defendant, who actually worked as a Clerk is against law and fact. However, the plaintiff in surcharge proceedings No.15/2003-04, had concluded that the first defendant along with 4, 5, 7, 8, 9, 10, 11 and 12 defendants to a tune of Rs.58,47,600/-, 1, 2, 4, 5, 7, 8, 9, 10, 11 and 12 defendants to the tune of Rs.53,00,000/-, 1, 2 and 3 defendants to the tune of Rs.9,54,000/- and 1 and 3 defendants to the tune of Rs.27,16,000/- and in total to the tune of Rs.1,00,47,600/- are liable to pay with prevailing interest to the Societies.

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7.The case of the third defendant/revision petitioner in C.R.P(MD)No.1549 of 2015 is as follows:-

The third defendant/S.S.Rajeswari worked as a Junior Inspector/Manager for the period from 08.05.2000 to 24.05.2001 and as a Special Officer from 25.05.2001 onwards. Based on the Section 81 enquiry in respect of the loss incurred to the Co-operative Thrift and Credit Society Limited, Kokkirakulam, Section 87 enquiry was conducted by the Deputy Registrar of Co-operative Societies, Tirunelveli and he initiated proceedings by issuing show-cause notice dated 07.02.2004 to all 12 defendants including the third defendant and completed his enquiry on 30.12.2008 by fastening the liability of Rs.9,54,000/- on the defendants 1 to 3 and another amount of Rs. 27,16,000/- on the defendants 1 and 3. The plaintiff did not proceed in his enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act in accordance with law and he has not recorded any findings in his enquiry that the third defendant was wilful negligence or deliberately negligent or indifferent in performing her duty and hence levy of surcharge imposed on the third defendant jointly and severally to pay the amount in two counts is ex-facie illegal. The plaintiff completely

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failed to take into consideration that the material fact of completion of accounts was the duty and responsibility of the said Society's Secretary Kartheesan and without completion of accounts by him, it was quite not possible for the third defendant, who is a Junior Inspector Grade Manager/Special Officer, to detect the misappropriation done by the said Secretary, since he has already manipulated the chalan and tampered with the figures and rotation of amounts. Fastening the liability on the basis of wilful negligence on the third defendant is not sustainable on the part of the plaintiff for having completely ignored a material piece of evidence, namely the speed memo issued by the third respondent in Ka.No.2192/2001, dated 28.06.2001 issued to the aforesaid Society's Secretary Kartheesan and Clerk K.Gnanasoundari insisting them to complete the accounts expeditiously which were their duty which was not complied by them even from 1996-97 long before the third defendant was appointed. Hence, for the various misappropriation, tampering of accounts and breach of trust committed by the Secretary Kartheesan, the third defendant should not have been fastened with levy of surcharge by the plaintiff and held that the first defendant along with 4, 5, 7, 8, 9, 10, 11 and 12 defendants to a tune of Rs.58,47,600/-, 1, 2, 4, 5, 7, 8, 9, 10, 11 and 12 defendants to the tune of Rs.53,00,000/-, 1, 2 and 3

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defendants to the tune of Rs.9,54,000/- and 1 and 3 defendants to the tune of Rs.27,16,000/- and in total to the tune of Rs.1,00,47,600/- are liable to pay with prevailing interest to the Societies.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.Based on the 81 enquiry in respect of the loss to the A. 237, Tirunelveli District General Employees Co-operative Thrift and Credit Society Limited, Kokkirakulam, Section 87 enquiry was conducted by the Deputy Registrar of Co-operative Societies, Tirunelveli. He initiated proceedings by issuing show cause notice, dated 07.02.2004 to all the 12 defendants and completed his enquiry giving finding on 30.12.2008, directing the defendants to pay various amounts to the Co-operative Thrift and Credit Society Limited, Kokkirakulam, in four counts as follows:-

10.For item No.(1), the defendants 4, 5, 7, 8, 9, 10, 11 and 12 defendants to a tune of Rs.58,47,600/-, for item No.(2), the defendants 1, 2, 4, 5, 7, 8, 9, 10, 11 and 12 to the tune of Rs. 53,00,000/-, for item No.(3), the defendants 1, 2 and 3 to the tune of

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Rs.9,54,000/- and for item No.(4), the defendants 1 and 3 to the tune of Rs.27,16,000/- and in total to the tune of Rs.1,00,47,600/- are liable to pay with prevailing interest to the Societies. Aggrieved over the same, the first defendant preferred C.M.A(CS)No.8 of 2009 and the third defendant preferred C.M.A(CS)No.9 of 2009 before the Principal District Court at Tirunelveli.

11.The first defendant was working as a Secretary to the Society and the third defendant as a Junior Inspector/Manager for the period from 08.05.2000 to 24.05.2001 and as a Special Officer from 25.05.2001 onwards. Section 87 enquiry was initiated on 07.02.2004 and the enquiry was completed on 30.12.2008. The Board of Directors were functioning from 19.06.2001 to 2006 and thereafter the Society was running under Special Officer. During the administration period of the Board of Directors, the first defendant misappropriated an amount of Rs.58,47,600/- with the help of the defendants 4 to 12. Similarly, the second defendant with the help of the other defendants misappropriated a sum of Rs.5,30,000/- during the administration of the Board of Directors. During the administration of the Special Officer, a sum of Rs.27,16,000/- and a sum of Rs.9,54,000/- was misappropriated by the defendants 1 and 2. It is pertinent to mention



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herein that the third defendant served as a Special Officer from 25.05.2001 onwards. In total an amount of Rs.1,00,47,600/- was misappropriated by the defendants 1, 2 and 4 to 12. The third defendant as a Special Officer from 25.05.2001 and as a Junior Inspector/Manager from 08.05.2000 to 24.05.2001 failed to take necessary steps to prevent the misappropriation of the aforesaid hefty amount from the Co-operative Thrift and Credit Society Limited, Kokkirakulam.

12.The first defendant was the Secretary of the Society and while working as a Secretary, he made a false entry in the accounts of the Society, he forged the chalan thereby lesser amount was entered in the chalan and remitted into the Central Co-operative Bank. Further, the balance amount was misappropriated by the first defendant for the period from 1998, 2001 and 2002. Though the first defendant claims that he was working as a Clerk and the bye-laws of the Society have never provided for the post of Secretary, the entire allegation of fastening the levy of surcharge on the first defendant as baseless is not proved. It is the first defendant who acted as the Secretary of the said Society and he was the kingpin behind the entire misappropriation. Hence, the learned Principal District Judge,

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Tirunelveli, confirmed the order passed by the plaintiff. As against the same, the defendants 1 and 3 preferred the Civil Revision Petitions.

13.Now the point for determination in these two Civil Revision Petitions is whether the order passed by the plaintiff against the defendants in surcharge proceedings in S.C.No.15/2003-2004, dated 30.12.2008 is liable to be set aside as against the defendants 1 and 3/revision petitioners herein.

14.The main contention of the first defendant in attacking the final order passed by the plaintiff in the surcharge proceedings under Section 87 is that the first defendant is not at all a Secretary in the aforesaid Co-operative Thrift and Credit Society Limited, Kokkirakulam, but he served only as a Clerk. However, the plaintiff has concluded in his enquiry that the first defendant had miserably failed to file a proper explanation and documents that he served only as a Clerk in the aforesaid Society. That apart, the avocation of the first defendant as the Secretary of the said Society has been confirmed by the enquiry report submitted by the enquiry officer under Section 81 of the Tamil Nadu Co-operative Societies Act. The finding of the said enquiry was based on the various documents of the said Co-operative



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Thrift and Credit Society Limited, Kokkirakulam, in each and every document, which has been perused by the enquiry officer, especially in the forged chalans and the various other documents, the first defendant has been mentioned as the Secretary. In addition to that the 8th defendant one G.Sugumaran has deposed in his evidence by appearing before the plaintiff for enquiry on various dates and specifically on 16.04.2004 while deposing his evidence, he had confirmed that the first defendant was the Secretary of the Society and he also confirmed the same in his affidavit, dated 01.03.2004 explaining that he served as one of the Board members during the period 01.11.1996 to 31.12.1997 and it has been resolved in various Board meetings directing the first defendant/Secretary of the Society to complete the accounts of the Society and submit the same before the Board of Directors. However, he reiterated that the first defendant/Secretary of the Society failed to complete the accounts and post 31.12.2007 the said G.Sugumaran did not serve on a Board of Directors. That apart, the third defendant has categorically defended the levy of surcharge as against her, challenging the proceedings of the plaintiff in surcharge S.C.No.15/2003-2004 by categorically contending that the first defendant is fully responsible for the entire misappropriation as the Secretary of the said Society. Hence, the



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argument of the first defendant that he never worked as the Secretary of the Society, but only as a Clerk do not have any substance. Vide Resolution No.1 of the Executive Committee of the Society, on 09.01.1999, the then Special Officer made the first defendant as the Secretary of the Society and conferred him with all the powers of the Society and he was paid the salary as Secretary by 12(3) agreement under the Industrial Disputes Act, dated 10.02.1999.

15.The second ground of challenge by the first defendant is that the surcharge proceedings were not completed within the mandated period of six months and the same was initiated on 07.02.2004 and 87 enquiry was completed on 30.12.2008 and as per Section 87(1) of the Tamil Nadu Co-operative Societies Act, the surcharge enquiry under Section 87 ought to have been completed within a period of six months. But the plaintiff took four years and 10 months to complete the investigation and hence, the same is barred by limitation. However, a critical perusal of the proceedings of the plaintiff, dated 30.12.2008 and relevant records, I find that a Writ Petition in W.P(MD)No.14855 of 2004 was filed and an interim stay was granted in W.M.P(MD)No.17612 of 2004 on 01.06.2004 and finally the said Writ Petition was dismissed on 11.07.2008. During the pendency of the said



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Writ Petition from 01.06.2004 to 11.07.2008 pursuant to the interim stay granted by this Court, the plaintiff did not proceed with the surcharge enquiry. Thereafter, an extension of time was sought by the plaintiff to the Joint Registrar on 09.08.2008 and the Joint Registrar, Tirunelveli in his proceedings, dated 13.09.2008, granted three months' time. However, enquiry was not completed within the said period and again a further extension was sought for on 25.11.2008. The Joint Registrar in his further proceedings, dated 13.12.2008 extended till 31.12.2008 and the Section 87 surcharge was completed by the plaintiff on 30.12.2008.

16.The proviso to Section 87 mandates that no action under this sub-Section 87(1) shall be commenced after the expiry of seven years from the date of any Act. However, the action initiated shall be completed within a period of three months from the date of such commencement and such further period or periods not exceeding one month at a time and the next higher authority may permit extension of time not exceeding three months in aggregate. The above discussion would reveal that only because of the filing of the Writ Petition by the defendants, the 87 enquiry initiated on 07.02.2004 was not further proceeded on the grant of interim stay on 01.06.2004 by



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this Court. Thereafter, on the dismissal of the Writ Petition on 11.07.2008, the plaintiff completed the surcharge enquiry within a span of five years excluding the period of stay as mandated by the Act. Hence, the question that the entire proceeding is barred by limitation would not arise in this case.

17.The third ground attacked by the first defendant is that he was not given with proper opportunity to cross-examine the witnesses. A clear perusal of the surcharge proceedings would throw light on the fact that the enquiry officer was examined in this case, but the first defendant did not cross-examine the enquiry officer on the day of examination in chief, but he sought for adjournment and other defendants who appeared on that day cross-examined the enquiry officer. Thereafter, the plaintiff filed a petition to re-call 81 enquiry officer for cross-examination for the hearing on 19.11.2008, but the enquiry officer did not attend enquiry on that date. Under such circumstances, on 18.12.2008, the first defendant appeared with his counsel and filed his written reply and also gave a statement and in his statement, he admitted that sufficient opportunities were given to him denying all the misappropriation which have alleged to have been committed by him and contended that the allegation as against him



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was not proved through records. But the plaintiff has clearly found that as per records, he was the Secretary of the Society and in the capacity of the Secretary of the said Society, he had made false entries, forged chalans and remitted a lesser amount than what actually ought to have been deposited and misappropriated the balance amount. Regarding the allegation of the opportunity of cross-examination being not given in respect of 81 enquiry officer, it is only the first defendant who missed the opportunity of cross-examining the enquiry officer on the date of the first instance when he appeared, on which date the other defendants cross-examined him. Since 81 enquiry is a time-bound enquiry, it has to be completed within the prescribed time as per the statute and hence, the same cannot be prolonged at the instance of the first defendant and in view of the admission made by the first defendant himself that he had been given with sufficient opportunity, the ground that he was not given an opportunity to cross-examine the enquiry officer has no legs to stand. In total it is a clear finding that the first defendant made false entry into the account in the day book, ledger, chalans and he himself has misappropriated a total amount of Rs.1,00,47,600/-. Hence, fully in consonance with the view of the learned Principal District Judge, Tirunelveli, I am not inclined to interfere with the order passed by the learned Principal District Judge,

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Tirunelveli in C.M.A(CS)No.8 of 2009 and the surcharge case No.15 of 2003-04 dated 30.12.2008 on the file of the plaintiff. **Accordingly, C.R.P(MD)No.604 of 2005 is dismissed.**

18.Regarding the third defendant is concerned, she was working as a Manager for the period from 08.05.2000 to 24.05.2001 and Special Officer from 25.05.2001 in the said Society. It is pertinent to mention here that before 08.05.2000, she was not working in the said Society. The allegation against her is that she did not find out the misappropriation made by the first defendant for the period from 1997-98 to 2001-2002. According to the finding of the plaintiff in the surcharge proceedings, the first defendant during the period 1997-98 to 2001-2002 had made false entries, forged the chalans, paid lesser amounts and misappropriated the balance amount and the same was not promptly detected by the third respondent and the finding is that it is the duty of the third defendant to verify the day book and sign the same as against the entries made by the first defendant in terms of the provisions of Sections 88 and 89 of the Tamil Nadu Co-operative Societies Act. Sections 88 and 89 of the Tamil Nadu Co-operative Societies Act empowers the Special Officer to exercise all or any of the functions of the Board or any officer of the Society and to take such



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action as may be required in the interest of the Society. The plaintiff proceeded to conclude that despite the first defendant misappropriating an amount of Rs.9,54,000/- and Rs.27,16,000/- in two spells during the period when the third defendant served as a Special Officer, as per the provisions of the Tamil Nadu Co-operative Societies Act, being the Special Officer, the third defendant was duty bound and ought to have verified the accounts and ought to have promptly detected the misappropriation thereby squatting the misappropriation in a timely manner. Since she failed to do the same, fastening joint responsibility both severally and jointly with the first defendant to the tune of Rs.36,70,000/-, the plaintiff concluded the surcharge proceedings by levying surcharge as against the third defendant. As a Special Officer, it is significant to observe here that the plaintiff has miserably failed in finding that the third defendant was wilfully negligent in performing her duty so as to attract action under Section 87 of the Tamil Nadu Co-operative Societies Act. In the absence of such a positive finding, the plaintiff has no jurisdiction, power and authority under Section 87 to initiate surcharge proceedings against the third defendant on the alleged ground of mere negligence in performing her duty as a Junior Inspector Grade Manager/Special Officer.

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19.The first point for consideration is that the third defendant was not working in the Society in question during the period 1997-98 and she commenced her service as a Special Officer from 25.05.2001. The entire crux of the finding of the plaintiff revolves around the factum that the Secretary Kartheesan ie., the first defendant, did not complete the daily register for the years 1996-97, 1997-98, 1998-99 and 1999-2000. The material fact is that the entire misappropriation was done by the first defendant by tampering and manipulating the chalans, accounts, records, receipts and reducing the payment in chalans, the amount received from the borrowers, the receipt issued to the borrowers for payment made by the borrowers and the receipt return for payment into the District Central Co-operative Bank by decreasing the amount paid and misappropriating the balance of the amount. For the entire illegal and breach of trust committed by the first defendant, the responsibility has been fastened on the third defendant alleging that she had been wilfully negligent in discharging her duty as a Secretary, neglecting the fact that unless and until the first defendant completed the accounts for the year 1996 to 2001, she cannot monitor the subsequent accounts 2001-2002 from the date on which she commenced her service as Manager and then as Special Officer.

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20.The Board of Directors has resolved several times directing the first defendant to complete the accounts for all those mentioned years and submit them before the Board with immediate effect and the first defendant having neglected to do the same consistently and continuously, the third defendant promptly issued a speed memo dated 22.10.2001 as a Special Officer to the first defendant/Secretary and the Clerk of the Society G.Gnana Soundari and the same has been marked as Ex.M.38 in the domestic enquiry initiated by the third defendant against the first defendant. Despite the same, the auditing of the accounts was not completed since the Secretary and the Clerk Gnana Soundari failed to complete the accounts as directed in the memo. The plaintiff has totally ignored the material evidence namely the speed memo dated 22.10.2001 by which the third defendant had promptly taken steps as the Special Officer as against the first defendant. Despite the speed memo and several other memorandum issued and inspite of the best efforts taken by the third defendant, the first defendant who was responsible for the entire misappropriation and for the purpose of covering the irregularities did not complete the accounts by all means for the entire period from 1996 to 2001. The plaintiff failed to take into account that the third

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defendant as Junior Inspector/Grade Manager had no power to suspend the Society's Secretary, while the Board of Directors is the appropriate authority before whom the accounts have to be submitted from time to time by the Secretary on completion. The plaintiff ought to have called for the entire records and documents marked and available in the file relating to the domestic enquiry initiated against the first defendant relating to Section 81 enquiry before fixing liability on the third defendant. Even before the third defendant was appointed from 1997-1998 upto to 07.05.2000, the first defendant had misappropriated a sum of Rs.15,97,200/- for which no action was taken by the elected Board of Directors to detect it and suspend the said Kartheesan. After the third defendant took charge as a Junior Inspector Grade Manager/Special Officer, despite her speed memo, dated 22.10.2001 the first defendant with all might continued to tamper with the records of the Society and misappropriated the amount.

21.Despite the first defendant not completing the accounts from 1997-98 and 1998-99, the then Special Officer vide the resolution of the elected Executive Committee No.3, dated 09.01.1999, made the first defendant as the Secretary of the Society and conferred

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him with the powers of Secretary and he was paid salary as Secretary by 12(3) Agreement dated 10.02.1999, instead of suspending him and taking action. That apart, the plaintiff also failed to take into consideration the resolution No.5 of the Executive Committee, dated 08.05.2000 seeking the first defendant to complete the accounts and submit the same before 20.05.2000 and another resolution No.4 of the Executive Committee, dated 03.06.2000 asking the first defendant to submit the account before 20.06.2000. Likewise, the resolution No.2 of the Executive Committee, dated 19.06.2000 wherein it was resolved that the first defendant had failed to do his duty before 20.06.2000 and hence he is liable to be suspended was also not considered by the plaintiff.

22. Precisely even before the appointment of the third defendant as Junior Inspector Grade Manager/Special Officer, the Executive Committee of the Board had repeatedly recorded the anomalies in completion of accounts committed by the first defendant. After the third defendant became the Special Officer she certainly took prompt steps by issuing speed memo, dated 22.10.2001 and further memorandum against the first defendant which were also negated by the plaintiff. Having failed to take action against the first defendant

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from 1998 despite the recommendation of the Board, the liability fastened on the third defendant is not sustainable and hence, this Court is of the considered view that the order passed in C.M.A.CS.No.9 of 2009 dated 08.12.2014 on the file of the learned Principal District Judge, Tirunelveli and the surcharge case No.15 of 2003-04 dated 30.12.2008 by the Deputy Registrar of Co-operative Societies, Tirunelveli, are hereby set aside. Accordingly, C.R.P(MD)No.1549 of 2015 stands allowed.

23.In the result:-

C.R.P(MD)No.604 of 2015 stands dismissed and C.R.P(MD)No.1549 of 2015 stands allowed. There shall be no order as to costs.

27.09.2023

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

- 1.The Principal District Judge,
Tirunelveli.
- 2.The Deputy Registrar of Co-operative Societies,
Tirunelveli.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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