BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.07.2023
Delivered on : 29.09.2023

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2232 of 2022
and
C.M.P(MD)No.10449 of 2022

The Managing Director,
Dindigul District Central
Co-operative Bank ltd.,
Kooturavu Nagar, Dindigul. ... Revision Petitioner/
2nd Respondent

Vs.

1.P.Jeyaraman ... 1st Respondent/Petitioner
S/o.Periyasamy,
Assistant General Manager,
Dindigul District Central Co-operative Bank,
Residing at 2/792, Gandhi nagar,
Batlagundu,
Dindigul District. ... Respondent/Appellant

2.The Deputy Registrar of Co-operative Societies,
No.1, State Bank Colon,y
Nehruji Nagar,
Dindigul-624 001. ...Respondent/
1st Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the order passed in C.M.A(C.S)No.20/2019 dated 08.02.2022, by the Co-operative Apellate Tribunal / Principal District Court, Dindigul, uphold the order passed by the 2nd respondent/1st respondent in S.C.No.6/2017 (1) in Na.Ka. 117/2016 (Ku.Na) dated 18.05.2018.

For Petitioner	:Mr.M.Ganesan
For R1	:Mr.T.Ravichndran
For R2	:Mr.G.Suriyanath, Additional Government Pleader

ORDER

This revision petition is preferred as against the judgment and decree dated 18.05.2018 passed in C.M.A(C.S)No.20/2019 dated 08.02.2022, by the Co-operative Appellate Tribunal / Principal District Court, Dindigul.

2.The facts of the case is that the first respondent as appellant has filed the Civil Miscellaneous Appeal in C.M.A(CS)No.20 of 2019. The first respondent was employed as Assistant General Manager in Dindigul District Co-operative Bank Ltd.,, Dindigul Main Branch. The Deputy Registrar, Co-operative Society received an information regarding irregularities, misappropriation of funds were committed in the Co-operative Bank, in grant of loans to Women self help group and micro commercial loan. Therefore, the Deputy Registrar ordered *suo motu* enquiry under Section 81 of the Act, by his proceedings, dated 14.1.2016. The Enquiry Officer submitted his findings that there were dereliction of duty and negligence committed by the staffs and had caused loss to the society to the tune of Rs. 1,78,87,200/-. The first respondent, P.Jeyaraman, was working as Assistant General Manager in main branch of Dindigul Central Co-operative Bank. The Enquiry Officer submitted his findings that the appellant and others were responsible for the alleged loss caused to the society. Pursuant to which, surcharge notice was issued on 19.05.201. Since the explanation was not satisfactory, the Deputy Registrar passed the surcharge proceedings on 18.05.2018 directing the first respondent/appellant to pay a sum of Rs. 14,52,976/- with interest at 15% from 21.06.2016. Aggrieved by the order, the first respondent/appellant has preferred the appeal. The above appeal was allowed by setting aside the order passed by the Deputy Registrar of Co-operative Society, Dindigul, in S.C.No.6 of 2017-18 dated 18.05.2018. The said order is assailed by the revision petitioner in this petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner/petitioner Bank is constituted under the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder. The Bank is having registered by-laws in accordance with the Rules and Regulations of the said Act, pertaining to the constitution, objects, membership and other affairs of the bank and Special By-laws relating to the service Conditions of the employees of the petitioner/petitioner bank. The predominant object of the 'Bank' is to extend credit facilities to its member Co-operative Institution affiliated with it and situated within its area operation ie., Dindigul District. The Societies by availing such credit facilities are lending loans to their members, as per their respective objects, repayable with easy installments at a reasonable rate of interest. The Bank is having branches throughout Dindigul District and undertakes to give credit facilities directly to its various members including self help groups etc., mostly by way of executing/implementing the policy of the State and Central Government. It is further submitted that the employees working in the petitioner Bank under various categories are allotted with duties and responsibilities and they are expected to discharge their functions in accordance with the same, as well as, following the guidelines and directions issued by the administration of the petitioner Bank then and there and their performance are inspected by the officials of the petitioner Bank, as well as of the Co-operative Department. The provisions of Tamil Nadu Co-operative Societies Act, are applicable to the bank and to be adhered to as such.

4.It is further submitted that vide Section 81 of the Tamil Nadu Cooperative Societies Act, the Registrar may order for an enquiry against any Cooperative institution with regard to any of the affairs of the concerned Society. Accordingly, an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, was ordered on the affairs of the bank at the head office and in few branches. The report of the Enquiry officer brought out a set of serious lapses, rather irregularities, illegalities, as well as financial pilferage of several kinds with recommendation to take appropriate disciplinary actions against those indulged in certain mal-practice as indicated in Section 81 Enquiry Report. The Enquiry Officer recommended for criminal and disciplinary proceedings against those concerned, including the 1st respondent and co-employees. Accordingly, the bank was advised by the Circle Deputy Registrar to take disciplinary action and the Circle Deputy Registrar initiated the surcharge proceedings and lodged criminal complaint against all of the employees of the Bank, who were involved in the above misdeeds, and the 1st respondent is one among them, thereby he was also impleaded in the surcharges proceedings.

5.While so, the Arbitrator segregated the surcharge proceedings into four separate proceedings initiated against the first respondent and co-delinquents under Section 81 Enquiry Report in S.C.6/2017(1), 6/2017(2), 6/2017(3) and 7/2017. In S.C.6/2017(1), the first respondent was a party and after detailed adjudication he was held responsible along with other co-delinquents in S.C.6/2017(1) for the loss of Rs.14,52,976/- through the order dated 18.05.2018. Against which, the first respondent preferred an appeal before the District Court, Dindigul, under Section 152 of Tamil Nadu Co-operative Societies Act, in C.M.A(CS)No.20 of 2019 and after detailed adjudication, the Principal District Court allowed the appeal in favour of the first respondent stating that the first respondent in his tenure failed to scrutiny the defective loan applications to the Self Help Groups and found that there was no willful negligence and allowed the appeal. The learned counsel further submitted that the appellate Tribunal dropped the first respondent from the allegations and shifted his responsibilities to the subordinates and came to a conclusion that the first respondent properly discharged his duties. The petitioner Bank suffered with the huge loss, due to misdeeds of its employees including the first respondent. The petitioner Bank initiated recovery proceedings from the delinquent employees who are still in service of the Bank including the first respondent and also from other delinquent employees who are not in service from their assets. If the impugned order is allowed, the recovery process will suffer to a great extent. Hence, he prays for setting aside the order of the appellate Court.

6.The learned counsel appearing for respondent would submit that there is no perversity or infirmity in the order passed by the learned Tribunal and therefore no interference called for.

7.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

8.There is no dispute that the first respondent, who is the appellant in C.MA.No.20/2019, was holding the post of Assistant General Manager from 16.04.2010 to 11.07.2011. The allegation against the first respondent is that he has not properly verified the loan application forwarded by the then Branch Manager, who is a co-delinquent in the surcharge proceedings. Further, the allegation against the first respondent is that he was not merely negligent but was willful negligent in his duty. The learned District Judge, in C.M.A.No.20 of 2019 has come to a conclusion that the act of the first respondent is only negligence and not a willful negligence.

9.I have heard the learned counsel for the parties and perused the materials available on record and also considered the order passed by the learned Principal District Judge, Dindigul.

10.As per Section 87(1) of Tamil Nadu Co-operative Societies Act, surcharge proceedings can be initiated against a person only among other grounds, when willfully negligent to act or omitted to act in discharging his duties. In this connection it is useful to refer Section 81/1 of the Act, which reads as follows:

> *"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 willful 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 willful 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 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."*

11.In this background of facts, it has to be seen whether the alleged negligence on the part of the petitioner is willful, deliberate and wanton. The negligence or willful negligence is not defined in the Act. In the judgment reported in 1994 Supp. (3) SCC 134 [cited supra], it has been held that willfulness is premeditation or knowledge and consciousness that an injury or loss was likely to result from the act done or from the omission to act. In the judgment reported in 1980 (2) MLJ 17 [cited supra], which is followed in subsequent judgments, the meaning of word "willful negligence" was elaborately considered and also the various judgments, including the judgments, which dealt with "default" and "willful default". Considering all these judgments, the learned Judge [Ratnavel Pandian, J., as he then was] has held in paragraphs 28 and 32, as follows:

"28. Anantanarayanan, C.J.. in Durairaj. v. Rathnabai (1967) 1 M.L.J. 324, pointing out that there is a sharp distinction between "default" and "willful defaut quoted with approval the following observation made by Ramamurti, J, in Khivraj Chordia v. Maniklal Bhattad MA-NU/TN/0208/1966 : AIR 1966 Mad. 67 .

"The principle that emerges from the several decisions is that for default to be regarded as willful default, the conduct of the tenant should be such as to lead to the inference that his omission was a conscious violation of his obligation to pay the rents or a reckless indifference."

Ramaprasada Rao, J., as he then was. in Rajagopal v. Saraswathi Ammal /TN/0295/1976 : (1977) 2 MLJ 8, explained the above words "willful default" occurring in the said Act, as follows:

"Repeatedly the Courts here and elsewhere have taken the view that the expression "willful default" is not an expression of art but a meaningful phraseology used by the statute with a definite purpose. The default committed by a tenant should be so telling and conspicuous that any reasonable person apprised of such circumstances and having the occasion to adjudicate upon such facts should come to the conclusion that the tenant was recalcitrant and supremely indifferent and purposely evading the performance of his legitimate obligation of sending the rents to the landlady in time, ... The willfulness should be the result of recalcitrancy and deliberateness."

Having regard to the interpretations and discussions in respect of the term "willful" appearing in various enactments, as found in the case-law decided by the learned English and Indian Judges which serve as a guide to the construction of the term "willful" used in Section 71(1) of the Act, I am of the view that in order to pass a surcharge order under that section against a person entrusted with the organisation and management of a cooperative society or an officer or servant thereof, such person 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 (but not by accident or inadvertence), without taking due care and precaution ordinarily expected from a reason-able and prudent man under those existing circumstances, that is to say, not caring what the result of his carelessness would be. To make it explicit, it may be stated that he should have acted in breach of legal obligations or in conscious disregard of duty or with an intentional failure to perform the manifest duty, in the performance of which the public have an interest, and that such commission should be the proximate cause of the loss or deficiency in question.*

32. .... The Auditor checked the accounts and detected the deficiency in the month of October, 1969. The President and the authorized members were at liberty to verify the accounts even after October, 1969 and therefore, we cannot impute any willful negligence on the part of the President and the board of Directors. What can be said is that the auditor had detected the deficiency before it could have been detected by the President and other directors. It is true that the President is in over-all control of the affairs of the society. But, it does not mean that on each and every day, the President ought to have verified the accounts, cash balance etc., as the bye-law does not impose such kind of duty, but only says that it is for the Treasurer to verify the cash balance at the close of every day. At any rate, the Court would not be justified in drawing an inference that there was a willful negligence within the meaning of Section 71(1) of the Act on the part of the President or the directors."

21.In 2009 (4) MLJ 992 [cited supra], a Division Bench of this Court held that to pass a surcharge order under Section 87 of the Act, the employees of the Society 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 caution ordinarily expected from a reasonable and prudent man under the existing circumstances.

23.*In the judgment reported in 1999 (3) MLJ 310 [cited supra] also, the Court has decided that mere negligence is not a ground for initiating surcharge proceedings.*

24.*In the present case, a reading of the report of the enquiry officer under Section 81 of the Act as well as the order of the second respondent in surcharge proceedings clearly shows that both the Officers have not stated that the petitioner has intentionally deliberately and willfully omitted to discharge his duties as Special Officer, when he failed to verify the loan register with deliberate intention to permit the Secretaries to commit irregularity and misappropriate funds. The enquiry officer in his report under Section 81 of the Act recommended for surcharge proceedings against the petitioner on his mere negligence in his discharging duties. The second respondent, in his surcharge order, had repeatedly stated that the petitioner had acted negligently and caused loss to the Society. Nowhere in the order, he has stated that the petitioner was willfully negligent in discharging his duties. The second respondent also failed to consider the statement of K.V.Selvaraj, Senior Clerk, who has stated on oath that (1) Secretary Murugesan and Sales-woman Pushpavalli used to prepare the documents staying in* *the Society till 9.30 p.m. in the night and forced to obtain the signature from him in the morning; (2) that all the acts were done by the Secretary without consulting others and without the knowledge of other Staff; and (3) that all the members used to meet the Secretary to transact all the business only with him. The learned District Judge as a Presiding Officer of the Cooperative Tribunal also failed to consider that the enquiry officer under Section 81 of the Act and the second respondent have not alleged that the petitioner by his willful negligence permitted the irregularities and misappropriation. The learned District Judge was carried by the quantum of alleged misappropriation and failed to consider whether alleged negligence on the part of the petitioner is willful negligence as contemplated in Section 87(1) of the Act.*

25.*In view of the various judgments relied on by the learned counsel for the petitioner as well as the learned Additional Advocate General and the facts and circumstances in which the petitioner was placed, the allegation against the petitioner in surcharge proceedings and impugned orders, I hold that the respondents have failed to allege and prove the willful negligence on the part of the petitioner."*

12.In the present case, the allegation against the first respondent is that in the loan application for 10 self help groups photos were not affixed and there is no signature and therefore, grading was not carried out. Further allegation is that the first respondent failed to take any steps to initiate legal action against the defaulters. The explanation submitted by the first respondent before the District Registrar is that the loan applications of 10 group was recommended by its subordinate officials and therefore, there is no willful negligence on his part. According to the revision petitioner, the first respondent being Assistant General Manager, Non-agricultural loan section is vested with certain responsibilities. That (1)Scrutinize loan application, (2) Scrutinize non-agricultural loans and receive report, inspect the loan accounts and also follow the loan. (3)Initiate action against the defaulter, (4)Should take appropriate action to reduce NPA and (5) take legal action against defaulter. Therefore, it was alleged by the Deputy Registrar that he had not discharged his duties and responsibilities vested on him. It was alleged by him that the Branch Manager and Grading Officer has to scrutinize the loan application and sent to Central bank for approval by the Branch Manager. The Chief Revenue Officer, General Manager and Managing Directors has to verify the loan applications. If the loan applications are defective, the same should have been returned. Therefore, the first respondent failed to discharge his duty as contemplated.

13.The allegation against the 1st respondent is that he failed to conduct proper verification with regard to the loan applications submitted by the self help groups in main branch. However, the enquiry officer, during his examination, admitted that in 60 loan applications, there were no defects which was scrutinized by the first respondent. The Enquiry Officer, during his examination, has admitted that the said applications were verified by the first respondent Jeyaraman and along with one Venkatesan and the verification report was also submitted and the surcharge proceedings were not initiated with respect to those loan applications. Therefore, it is made clear that the verifications carried out by the first respondent and one Venkatesan is not connected with the surcharge proceedings. Though it is alleged that the first respondent in connivance with the branch manager and granting officer had caused loss to the respondent bank, the same was not established.

14.Further, the allegation against the first respondent is that he received bribe from one Manivel to the tune of Rs.8,000/- to process his loan application. According to the Enquiry Officer, the said Manivel had given a complaint in this regard. However, he had not produced any evidence in this regard. Therefore, mere lodging the complaint is not sufficient. The charge levelled the charge against the first respondent that he had received bribe from the said Manivel must be proved. Apart from this, the Enquiry Officer himself admitted that the first respondent has recommended not to grant any loan to the said Manivel. Hence, there is every possibility for him to give a false complaint against the first respondent due to vengeance. Therefore, there is no other charge to give a complaint against the first respondent by the said Manivel. Therefore, his statement against the first respondent cannot be relied upon. Moreover, surcharge proceedings can be initiated only when willful negligence act or omitted to act in discharging his duties. In this case, the petitioner failed to establish that the first respondent committed willfully negligence in discharging his duties. Therefore, the trial Court has rightly came to a conclusion that the first respondent cannot be held responsible for the loss caused to the society. Either in the enquiry report or in the surcharge proceedings it has been alleged that the first respondent has acted in a willful negligent manner. The ratio laid down in the judgment reported in 2002(3) L.W. 185, is squarely applicable to the facts of the present case.

15.For the above reason, this Civil Revision Petition is dismissed. The judgment and decree, dated 18.05.2018 passed in C.M.A(C.S)No.20/2019 dated 08.02.2022, by the Co-operative Appellate Tribunal / Principal District Court, Dindigul, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

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

To

1.The Principal District Court,
Dindigul.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

K.GOVINDARAJAN THILAKAVADI, J.

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