

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.1530 of 2018

The Deputy Registrar of Cooperative Societies,
1st Cross Street,
Shanmugapuram, Palani,
Now the Office held at
No.11/223, Raja Nagar,
Lakshmipuram,
Palani – 624 601.

... Revision Petitioner/Respondent/
Petitioner

-vs-

D.Imayavaramban

... Respondent/Appellant/ Party to the
proceedings

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.11.2017 made in C.M.A (CS) No.43 of 2010 on the file of the Cooperative Tribunal, Principal District Court, Dindigul reversing the order passed by the Deputy Registrar of Cooperative Societies, Palani, in surcharge proceedings Tha.Va.No.8 of 2009 Sa Pa. Dated 25.06.2010.

For Petitioner : Mr.M.Senthil Ayyanar
Government Advocate
For Respondent : Mr.M.Srinivasan

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.11.2017 made in C.M.A (CS) No.43 of 2010 on the file of the Cooperative Tribunal, Principal District Court, Dindigul reversing the order passed by the Deputy Registrar of Cooperative Societies, Palani, in surcharge proceedings Tha.Va.No.8 of 2009 Sa Pa. Dated 25.06.2010.

2. The petitioner herein is the respondent and the respondent herein is the appellant before the Court below.

3. The brief facts which give rise to the instant Civil Revision Petition are that the appellant herein has conducted an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. In which, they found loss to the Society under various heads to the tune of Rs.78,190.85/- (Rupees Seventy Eight Thousand One Hundred and Ninety only) and show cause notice was issued to the respondent herein as to why a surcharge proceedings should not be initiated under Section 87 of the Tamil Nadu Cooperative Societies Act.

Subsequently, on 25.06.2010, it appears that the surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act was issued against the respondent as well as one Mr.Sarguru who was the Secretary to the Society, on four different heads for loss caused to the Society to the tune of Rs.1,38,190.85/- (Rupees One Lakh Thirty Eight Thousand One Hundred and Ninety only)

4. According to the proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, the respondent herein is authorised to monitor day-to-day activities of the Society and having vested with the duty to supervise the accounts, though he has not committed any misappropriation, by his wilful negligence, he caused loss to the Society to the tune of Rs.1,38,190.85/- (Rupees One Lakh Thirty Eight Thousand One Hundred and Ninety only). Therefore, he was directed to make good the loss committed by him. However, against such proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, the respondent herein has preferred an appeal under Section 152 (1) of the Tamil Nadu Cooperative Societies Act 1983, in which, he contended that there was no wilful negligence on his part and also would submit that the very proceedings under Section 87 of the Tamil Nadu

Cooperative Societies Act is barred by limitation in view of proviso to Section 87 (7) of the Tamil Nadu Cooperative Societies Act.

5. The Co-operative Tribunal, after considering the either side submissions, has ultimately allowed the appeal filed by the respondent on the ground that the very proceedings under Section 87 of the Act is hit by limitation and also found that there was no material in respect of wilful negligence of the respondent and has ultimately allowed the appeal.

6. Aggrieved with the order, the petitioner herein has come up with this Civil Revision Petition.

7. The learned Government Advocate appearing for the petitioner would strenuously contend that the Court below has not considered the material aspect of pendency of criminal proceedings against the respondent before the Judicial Magistrate Court and the Court below has also not considered about the duties vest upon the respondent herein to monitor and supervise the day-to-day activities. The learned Government Advocate would also invite the attention of this Court, in respect of the precedent reported in

2005 1 LW 196 (The Member Secretary, National Council for Teachers Education, I.P.Stadium, New Delhi and another Vs. Pauls Teacher Training Institute Pauls Nagar, Thuthipet, Pondicherry represented by its Director S.R.S.Paul) and would submit that the finding of the Court below in respect of non-compliance of natural justice is not a straitjacket formula and the Tamil Nadu Co-operative Societies Act contemplated only the reasonable opportunity, or whereas, they have given reasonable opportunity. Therefore, the findings of the Court below that the natural justice was not followed is erroneous. Hence, he prayed to allow this petition.

8. Per contra, the learned counsel appearing for the respondent would strenuously object the contention of the submission made by the learned Government Advocate and would contend that according to the Co-operative Societies Act, what would require is not the negligence on the part of the respondent, but there should have been wilful negligence. Even according to the findings in the enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act, there is no finding in respect of the wilful negligence. The learned counsel for the respondent would also further submit that the very alleged misappropriation or the loss took place during 1998, whereas, the Co-

operative Act provides a limitation of only 7 years.

9. Considering the alleged misappropriation of the year 1998, the very proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act is hit by limitation. The learned counsel for the respondent would also submit that the findings of the Court below is a well reasoned one and the petitioner herein did not put forth any contention to interfere with the order of the Court below. Hence, he prayed to dismiss application.

10. This Court has given anxious consideration to the submissions of the learned counsel on either side.

11. From the submission of the learned Government Advocate, the point to be considered is whether the pendency of the criminal proceedings against the respondent before the Judicial Magistrate Court will save the limitation for the appellant herein. In this regard, the Court below after elaborately taking into consideration of Section 87 of the Tamil Nadu Co-operative Societies Act and also after following the precedents referred therein, has found that since the appellant herein did not submit any record as

to the pendency of the criminal proceedings and also the ground that there are no materials submitted before the Court as to the non-availability of the records with the Society. The Court below has disbelieved the contention of the appellant herein. This Court could not find any material before this Court to deviate from the findings of the Court below. Therefore, this Court is of the view that the finding of the Court below in respect of the limitation is liable to be confirmed.

12. Coming to the next aspects, the learned Government Advocate would invite the attention of the Resolution of the Society, and would submit that according to the Resolution, the President who is the respondent herein is ultimate responsibility for day-to-day maintenance of the account. The learned Government Advocate would also submit that since the respondent herein having counter-signed the accounts, he is also jointly responsible for the loss caused to the Society.

13. At this juncture, the learned counsel for the respondent would invite the attention of this Court to the provision under Section 87 (1) of the Tamil Nadu Cooperative Society Act. For ready reference, Section 87 (1) of the

Tamil Nadu Cooperative Society Act is extracted hereunder:

“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.”

14. As per the above Section, the Section mandates only the wilful negligence and not the mere negligence. In this regard, it is useful to refer to the findings of the Court below, wherein, no where there is a finding in proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, in respect of the wilful negligence. In view of such findings, the Court below has rightly concluded that there is no proof available for such wilful negligence.

15. It is also pertinent to mention here that before arriving at the above conclusion, the Court below has referred to the judgment of this Court reported in **89 Law Weekly 641 (Subbammal @ Rajammal and others vs. the President, the Tenkasi Co-operative Urban Bank Ltd, Tenkasi)**, wherein this Court has held that failure to check the accounts or to detect the misappropriations made by the Clerk cannot be said to be wilful negligence. The Court below also relied upon the Judgment in **1999 (4) L. L.N 483 (N.Sambandam Vs.Deputy Registrar (Credit) Co-operative Society Madras and others)** wherein this Court held that unless the acts committed were pursuant to any negligence wilfully or deliberately committed by the concerned person, no surcharge proceedings can be initiated against him. It is

also relevant to refer to the judgment followed by the Court below reported in **2002-3 LW 185 (S.Subramanian Vs. The Deputy Registrar of Co-operative Societies (Housing) Cuddalore and others)**, wherein, this Court has held that unless the loss committed by the person wilfully, no surcharge proceedings can be initiated.

16. Therefore, this Court is of the firm view that the Court below has elaborately considered the facts and law and has arrived at a just conclusion in allowing the appeal filed by the respondent. Therefore, this Court could not find any material to deviate from the findings recorded by the Court below.

17. In the result, this Civil Revision Petition is **dismissed**. There shall be no order as to costs.

05.09.2023

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

1. The Cooperative Tribunal,
Principal District Court, Dindigul.
2. The Deputy Registrar of Cooperative Societies,
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C.KUMARAPPAN,J.

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