



C.R.P.(MD)No.883 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.883 of 2017

and

C.M.P.(MD)Nos.3901 of 2017 & 6696 of 2022

Karunakaran ... Petitioner / Appellant/ 1st Respondent
Vs.

The Deputy Registrar Tamil Nadu Co-operative Society,
No.56, Kamatchiamman Kovil Street,
Aranthangi, Pudukkottai District.

... Respondent / Respondent / Petitioner

Prayer: This Civil Revision Petition is filed Article 227 of the
Constitution of India, against the order passed on 09.06.2014, made in
C.M.A.(CS)No.3/2007 in Na.Ka.No.9343/2006/B1, on the file of the
Court of Principal District Judge, Pudukkottai.

For Petitioner : Mr.S.Balakarthick

For Respondent : Mr.Senthil Ayyanar
Government Advocate



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ORDER

The revision petitioner is the appellant / first respondent and the respondent herein is the respondent /petitioner before the Court below.

2. The instant Civil Revision Petition has been filed against the order passed on 09.06.2014, made in C.M.A.(CS)No.3/2007 in Na.Ka.No.9343/2006/B1, on the file of the Court of Principal District Judge, Pudukkottai.

3. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court.

4. The learned counsel for the appellant / revision petitioner would submit that the sur-charge proceedings has been initiated against him as well as another person one C.Mohan under Section 87 of the Tamil Nadu Co-operative Societies Act (Herein after called “the Act”), on a specific charge that there was a misappropriation of a sum of Rs.18,89,751.99 in respect of 77 gold loans given to various persons.



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5. Aggrieved with the said sur-charge proceedings, he moved an Appeal before the Co-operative Tribunal. Wherein, he contended that he being the Secretary, he has no role in respect of the gold loan, and only the Assistant Secretary has responsibility in respect of loan and collected amount and in respect of locker. However, the Co-operative Appellate Tribunal has disagreed with the contention of the appellant / revision petitioner and has dismissed the appeal.

6. Aggrieved with the said order, the appellant has before this Court by way of the instant Civil Revision Petition.

7. The learned counsel for the revision petitioner would contend that the Co-operative Tribunal has not taken into consideration of the non supply of material records as those documents, at that relevant point of time, were under the custody of the police. It is also the submission of the learned counsel for the revision petitioner that the Co-operative Tribunal ought to have remanded the matter on the above ground. It is also the submission of the learned counsel for the revision



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petitioner that in view of the Resolutions and the by-laws of the Co-operative Union, the Secretary has no role in respect of the Registers and in respect of a gold loan.

8. Per contra, the learned Government Advocate for the respondent would strongly object the above contention and submit that the Secretary, being the Head of the Society, is the ultimate person responsible for the day to day conduct of the Society. It is also the submission of the learned Government Advocate that there is a duty cast upon the appellant to supervise the work by the Assistant Secretary. Therefore, contended that the petitioner's failure to have the effective supervision would result in loss to the Society to the tune of Rs.18,89,751.99. Therefore, prayed to dismiss the revision petition.

9. I have given my anxious consideration to the either side submissions.

10. The main contention put forth by the learned counsel for the appellant / revision petitioner is that the entire case records were at



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the relevant point of time under the police custody and that this petitioner has no access to those documents. Therefore, would contend that he has been deprived from effectively contesting the case and thereby, there is a violation of natural justice.

12. In this regard, this Court would like to refer the proceedings under Section 87 of the Act. On perusal of the Section 87 proceedings, it is amply clear that on 26.02.2007, this petitioner was given a copy of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act and has also been granted permission to peruse the relevant records before the Economic Offence Wing. However, in spite of such permission, he did not participate in subsequent proceedings and in spite of granting 8 adjournments, he did not give his explanation. If no permission granted by the police to peruse documents, the petitioner would have informed the same to the respondent or would have filed objection on the above ground. The petitioner has not cared to participate in the proceedings. Therefore, the contention put forth by the learned counsel that he has no opportunity to see the records from the police is not substantiated from any of the



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documents. Even while perusing the order of the Co-operative Tribunal, the petitioner herein did not produce any document to substantiate his contention in respect of the violation of natural justice. Therefore, his contention in respect of violation of natural justice in respect of surcharge proceedings is liable to be rejected.

13. The next contention of the learned counsel for the appellant / revision petitioner is that the entire responsibility regarding gold loan is vest with the Assistant Secretary and he has no responsibility towards the gold loan, and it's register and lockers, in which pledged jewels or kept under safe custody.

14. In this regard, the learned Government Advocate would invite the attention of this Court about the findings in respect of Section 87 of the Tamil Nadu Co-operative Societies Act, proceedings. Wherein, the Deputy Registrar by relying under the Resolution, dated 01.12.1995, held that there is a responsibility on the part of the petitioner herein to deposit the collected amount, then and there in the Central Co-operative Bank. It was also the finding of the Deputy



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Registrar of the Co-operative Society that, it is the duty of the Secretary to supervise and verify the work done by the Assistant Secretary. Therefore, the learned Government Advocate would submit that even for arguments sake if we consider that the alleged misappropriation is committed by the Assistant Secretary, the petitioner being the Secretary and has got power to supervise the Assistant Secretary, has failed to supervise the misdeeds of the Assistant Secretary, who is the second respondent in the Section 87 of the surcharge proceedings. The same lead into the misappropriation of sum of Rs.18,89,751.99. Therefore, as a Secretary of the Society, under the by-law, is liable to compensate the loss, is liable to be accepted.

15. At this juncture, the learned Government Advocate would invite the attention of this Court about Ex.B1 and Ex.B2 marked during the appeal proceedings. In this regard, the Co-operative Tribunal out of the total sum of Rs.18,89,751.99, has adjusted a sum of Rs.9,38,000/- as the same has been paid by the Assistant Secretary, viz., Mohan, during the pendency of appeal. Therefore, it is apparent that the said Mohan has admitted his guilt for misappropriation. The natural



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concomitant would be, the petitioner being the Secretary and has having duty and responsibility to supervise the account, were failed to deposit the collected amount, then and there. Therefore, he is also liable to compensate the loss, by virtue of the by-laws and resolution of the Society, mentioned in Section 87 surcharge proceedings.

16. Therefore, this Court is of the view that the order passed by the Co-operative Tribunal is well merited and based upon the records. The revision petitioner herein has not brought out any material or ground to interfere with the said finding. Therefore, this Court is of the firm view that the order passed by the Co-operative Tribunal is liable to be confirmed.

17. In the result, the instant Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

25.09.2023

NCC : Yes/No
Index : Yes/No
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To

1.The Principal District Judge,
Pudukkottai.

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



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C.KUMARAPPAN.,J.

Ls

Order made in
C.R.P(MD)No.883 of 2017

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