



W.A.(MD)Nos.1957 to 1959 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.11.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD)Nos.1957 to 1959 of 2023
and C.M.P.(MD) Nos.15221, 15222 and 15226 of 2023

1.The Co-operative Sub Registrar / Managing Director,
No.A.393, Kovilpatti Co-operative Urban Bank Ltd.,
Kovilpatti,
Thoothukudi District.

7.K.Akila
Co-operative Sub Registrar / Managing Director,
No.A.393, Kovilpatti Co-operative Urban Bank Ltd.,
Kovilpatti,
Thoothukudi District.

... Appellants / Respondents 6
and 7 in all the Writ Appeals

Vs

G.Krishnamoorthy ... 1st Respondent in WA(MD)1957/2023

K.Mahendran ... 1st Respondent in WA(MD)1958/2023

G.Thangavel ... 1st Respondent in WA(MD)1959/2023

2.The District Collector,
Thoothukudi District,
Thoothukudi.



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3.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

4.The Deputy Registrar,
O/o.Deputy Registrar of Co-operative Society,
Thoothukudi District,
Thoothukudi.

5.The Assistant Registrar,
O/o.Assistant Registrar of Co-operative Society,
Kovilpatti,
Thoothukudi District.

6.The Inspector of Police,
District Crime Branch,
Thoothukudi District,
Thoothukudi.

7.P.Premkumar .. Respondents 2 to 7 / Respondents
1 to 5 & 8 in all the Writ Appeals

COMMON PRAYER:- Writ Appeals filed under Clause 15 of Letters
Patent Act, to set aside the common order dated 24.08.2023 made in W.P.
(MD)Nos.18801 to 18803 of 2023 on the file of this Court.

For Appellant in all
the Writ Appeals

: Mr.S.Pon Senthil Kumaran

For Respondents

: Mr.S.Shanmugavel,
Additional Government Pleader
for R1, R3, R4, R6 in all the
Writ Appeals

Mr.Veeranthiran
Government Advocate
for R2 and R5 in all the
Writ Appeals



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COMMON JUDGMENT

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(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

These Writ Appeals have been instituted by the Managing Director of A.393, Kovilpatti Co-operative Urban Bank Ltd., Kovilpatti, Thoothukudi District.

2. The Co-operative Bank is a registered Society under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The first respondent in these Writ Appeals are admittedly the members of the appellant bank and holding Saving Bank Accounts and they have deposited their money in their accounts, which was acknowledged by the bank.

3. The collection agent of the appellant bank allegedly committed misappropriation of the funds of the Co-operative Bank and therefore, the first respondent members of the Co-operative Bank were deprived of drawing the deposited money. They have approached the jurisdictional police by registering a complaint for investigation and to initiate prosecution. Since the action by the jurisdictional police was objected, the first respondents filed Writ Proceedings before this Court



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seeking a direction to the Deputy Registrar and Assistant Registrar of Co-operative Societies and Inspector of Police to reimburse the total sum of Rs.7,79,000/-, Rs.7,71,000/- and Rs.7,71,000/- respectively, which were deposited in accounts Nos.G-01424, G-01426 and G-01425 respectively on the file of the appellant bank.

4. Learned Single Judge considered the issues with reference to the facts placed between the parties to the lis on hand. The appellant Co-operative Bank admitted the fact before the Writ Court that the amount due to the first respondents were misappropriated by their own collection agent and actions are being initiated to conduct Section 81 enquiry under the Tamil Nadu Co-operative Societies Act, 1983 and therefore, the learned Single Judge has erred in granting the relief in favour of the first respondents.

5. Learned counsel for the appellants mainly contended that the procedures contemplated under the provisions of the Tamil Nadu Co-operative Societies Act, 1983, are to be followed for the purpose of taking a final decision regarding misappropriation and to disburse the disputed amounts to the first respondent members. Section 81 enquiry



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has already been ordered and is in progress. That being so, there is no reason to grant relief at this juncture, which would cause prejudice to the interest of the appellant Co-operative Bank. Thus, the appeals are preferred.

6. In paragraphs 10 and 11 of the impugned judgment, the learned Single Judge made the following observations:-

“10.The petitioners-firm, manufacturer of safety matches, a small-scale industry, opened accounts with the sixth respondent bank for the purpose of disbursing bonus to their employers during the Diwali festival. The mode of collection is through agents by making an entry in the passbooks. Though the learned Counsel for the respondents claim that the petitioners have not produced any receipts, it appears that there is no proper mechanism for issuing any receipts. The respondents have not specifically established that there is a practice of issuing receipts for these deposits. The amounts were collected by the authorized agent engaged by the sixth respondent Bank.

11.Be that as it may, the fact remains that the issue was taken to the sixth respondent / Managing Director in the month of April, 2023. It appears that on 05.05.2023, the eighth respondent has given a letter of undertaking before the sixth respondent that he would return the amounts, misappropriated,



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due to the petitioners within a stipulated time. Even thereafter, neither the sixth respondent nor the Branch Manager or the General Manager have notified the customers about the large scale misappropriation committed by the eighth respondent. Not even a complaint was lodged from their end.”

7. Learned counsel for the appellants further contended that the Writ Petitions are not maintainable in view of the ratio laid down by the Larger Bench of this Court in the case of *Marappan v. Deputy Registrar of Co-operative Societies* reported in **2006 (4) CTC 689**.

8. On account of certain technical grounds a member of a Co-operative Bank cannot be deprived of drawing his own deposited amount lying with the bank in his account. The collection by Authorized Agent on behalf of the appellant bank is to be construed as a collection by the bank itself and that being the principles, the Bank cannot shriek its responsibility to repay the amount deposited by members / account holders. More so, in the present case, the letter of undertaking given by the bank would be sufficient to form an opinion that the members have deposited their hard earned money and they are entitled to draw their money as per the undertaking given by the bank before the learned Single Judge.



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9. In such circumstances, the Courts are bound to apply the principles of equity and any such hyper-technical grounds cannot lead to an injustice or result in miscarriage of justice. Therefore, it is not as if in all such cases wherein writ proceedings are instituted against the Co-operative Societies, the Writ itself is to be rejected. In certain cases, where there is gross injustice, then the Courts are bound to step in and grant the relief to the members of the Co-operative Society.

10. In the present case, if no relief is granted, undoubtedly, it would result in an injustice to the members, who have deposited their hard earned money. Further, a member who deposited his money cannot made to wait till such time Section 81 proceedings is completed and criminal prosecution is ended. Such decision, if taken, would be harsh and therefore, we are of the considered opinion that the learned Single Judge has considered the facts in a right perspective and the appellant bank is liable to settle the amounts, which were deposited by the first respondents, and simultaneously proceed by following the procedures as contemplated under the Tamil Nadu Co-operative Societies Act, 1983, to recover the misappropriated amount from the persons who have committed such an offence.



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11. Learned counsel for the appellants made a submission that an enquiry under Section 81 is in progress. On completion of such enquiry the bank is at liberty to proceed in accordance with law. However, pending enquiry would not prevent the first respondents members from drawing their amount, which were already deposited in the Bank. Thus, we do not find any perversity in respect of the relief granted in favour of the first respondents, in all the Writ Appeals.

12. Consequently, these Writ Appeals are dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

[S.M.S.J.] & [V.L.N.J.,]
15.11.2023

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

SJ

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Superintendent of Police,
Thoothukudi District,
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