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C.R.P.(NPD)No.667 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.667 of 2023
and C.M.P.No.5254 of 2023

The Management,
K-544, Gobi Agricultural Producers
Co-operative Sales Society Limited,
Gobichettipalayam.

.. Petitioner

Vs

1. A.Sudandaranathan

2. The Presiding Officer,
Principal District Judge,
Erode.

3.The Deputy Registrar of Co-op. Societies,
Gobi Circle, Gobichettipalayam.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 27.02.2014 in C.M.A.No.50 of 2013 on the file of the Principal District Court at Erode by confirming the surcharge proceedings passed by the 1st



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respondent, the Deputy Registrar of Co-operative Societies, Gobi Circle,
Gobichettipalayam, in Na.Ka.No.8036/2011/Sa.Pa., dated 19.04.2012.

For Petitioner : Mr.L.P.Shanmugasundaram

For R3 : Mr.N.Muthuvel, Govt. Advocate

ORDER

This civil revision petition arises against the order of the learned Principal District Judge at Erode in C.M.A.No.50 of 2013 dated 27.02.2014 in setting aside the order passed by the Deputy Registrar Co-operative Societies, Gobichettipalayam in Na.Ka.No.8036/2011/sa.pa., dated 19.04.2012.

2. The admitted facts in this revision are the 1st respondent was the Secretary of the civil revision petitioner from 06.02.2008 till 13.07.2011. An enquiry was instituted under Section 81 of the Tamil Nadu Co-operative Societies Act. This was initiated four days before the 1st respondent left the service of the petitioner. The enquiry officer submitted a report on 09.01.2012 observing that the society had suffered a total loss of Rs.16,41,145/-. On the basis of Section 81 enquiry, surcharge



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proceedings were initiated by the 3rd respondent. Four charges were

levied against the 1st respondent.

3. The first charge being that a loss of Rs.10,19,167.10 was caused in the sale of plantains and it had not been recovered as of 30.06.2011. The second charge is that the 1st respondent had not taken steps to recover a sum of Rs.2,08,894.05 towards the sale of paddy. The third charge was that the loss had been caused to the society by the sale of fisheries to the sum of Rs.3,31,878.85. The last charge being that on account of mishandling of cash, a loss of Rs.81,205/- was caused to the society.

4. The enquiry officer himself had discharged the 1st respondent from charge nos.3 & 4 and only left out charge nos.1 & 2. With respect to charge nos.1 & 2, the officer fixed a liability of Rs.8,07,031.95 as against the 1st respondent.

5. Aggrieved by the same, the 1st respondent preferred C.M.A.No.50 of 2013 before the Special Tribunal for Co-operative Matters-cum- Principal District Court at Erode.



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6. Considering the merits of the case, the learned Principal District Judge at Erode came to a conclusion that the 1st respondent is not liable, allowed the appeal and imposed a cost of Rs.10,000/- on the civil revision petitioner. Hence, this revision.

7. I heard Mr.L.P.Shanmugasundaram for the civil revision petitioner and Mr.N.Muthuvel for the 3rd respondent.

8. Learned counsel for the petitioner contended that the appellate Court had committed an error in setting aside the surcharge order of the 3rd respondent. According to him, the loss had been caused to the society on account of the inaction of the 1st respondent. He pointed out that the standard of proof for the 3rd respondent to pass an order of enquiry, at the time of surcharge proceedings, have not been properly appreciated by the learned Principal District Judge. He adds that the 1st respondent was the Chief Executive Officer of the Co-operative Society and therefore, responsible for the entire affairs of the society. In case any loss is caused to the society, it is the 1st respondent who is answerable to the same.

9. I have carefully considered the submissions of the learned counsel for the petitioner.



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10. I need not take strain myself to explain scope and ambit of

Section 87 of the Tamil Nadu Co-operative Societies Act. The same has already been concluded by the Hon'ble Mr. Justice Ratnavel Pandian (as he then was) in **Sathyamangalam Co-operative Urban Bank v. Deputy Registrar : Establishing Accountability in Co-operative Societies, (1980) 2 MLJ 17.** In clear and categorical terms, he held that there must be a wilful or deliberate act on the part of the person entrusted with the management of a society, which has caused loss to the society. Mere inaction would, by itself, cannot result in a proceeding being initiated against such a person. The inaction should be in the nature of wilful negligence and such wilful negligence is the proximate cause for the injury or loss sustained.

11. Since charge nos.3 & 4 have been exonerated, I need not trouble myself with them. In so far as charge nos.1 & 2 are concerned, it is not in dispute that the losses that had been caused to the society were on account of supplies that had taken place sometime in 1984 and 1987. At the relevant time, the 1st respondent was not even in the service of the petitioner. He joined service on 06.02.2008. It is also on record that, for the loss caused to the society, arbitration proceedings under Section 90 of



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the Tamil Nadu Co-operative Societies Act had been initiated and it had ended in an award in favour of the petitioner. On the strength of the award, execution proceedings had been initiated and the same were also pending. I failed to understand how, when steps had been taken for recovery of the amount for the default caused by the member, the 1st respondent can be proceeded against.

12. As it has been pointed out earlier, there is no wilful default on the part of the 1st respondent, this is a condition precedent for invocation of Section 87. No fraudulent conduct or improper motive has been alleged as against the 1st respondent. All these aspects have been rightly appreciated by the learned Trial Judge.

13. At this stage, the learned counsel for the petitioner urges that the learned Principal District Judge had imposed a cost of Rs.10,000/- on the civil revision petitioner. I would say that the learned Principal District Judge has been extremely lenient in imposing a paltry sum as costs. One can imagine the agony that an innocent party would have undergone on account of initiation of enquiry proceedings and surcharge proceedings. The learned Principal District Judge has given cogent and acceptable



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reason to allow the appeal and as pointed out above, the cost is only a slap on the wrist and is not commensurate the pain that has been caused to the litigant. I find absolutely no reasons to interfere with the order of the learned Principal District Judge at Coimbatore.

14. With the above observations, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.11.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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To

1. The Presiding Officer,
Principal District Judge,
Erode.

2. The Deputy Registrar of Co-op. Societies,
Gobi Circle, Gobichettipalayam.

3. The Principal District and Sessions Judge at Erode.



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V. LAKSHMINARAYANAN,J.

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