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C.R.P.No.605 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2024

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.605 of 2022

and

C.M.P.No.3133 of 2022

K.Indirani

W/o M.Sekaran

... Petitioner

vs.

1. The President,
Mettur Factories Employees
Co-operative Industrial Housing Society Ltd.,
K.K.128,
7/174-A, V.O.C. Nagar,
Thangamapuripatnam,
Metturdam R.S.-2, Salem District.

2. The Deputy Registrar (Housing),
Deputy Registrar of Co-operative Societies (Housing),
4th Floor, District Collector Office Complex,
Salem District.

..Respondents

Prayer in C.R.P. : Civil Revision Petition filed under Section 227 of the Constitution of India against the judgment and decretal order dated 23.09.2019 made in C.M.A.(CS).No.4/2014 on the file of Principal District Judge, Salem confirming the Surcharge Order passed by the 2nd respondent in Na.Ka.No.913/2012/E dated 01.11.2013.

For Petitioner : Mr.K.Raja

For Respondents : Dr.S.Suriya
Additional Government Pleader (CS)



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ORDER

This civil revision petition has been filed challenging the fair and decreetal order dated 23.09.2019 passed by the learned Principal District Judge, Salem, by which, the surcharge proceedings dated 01.11.2013 initiated by the 2nd respondent against the petitioner under section 87 of the Tamil Nadu Cooperative Societies Act, was confirmed.

2. The brief facts of the case of the petitioner are as follows:

The petitioner was working as Special Officer/Senior Inspector incharge from 01.12.2008 to 06.12.2009 in K.K.128, Mettur Industrial Employees Co-operative Housing Society Salem. Along with this society, the petitioner was in-charge of 12 more Societies as Special Officer/Senior Inspector. One Mr.Palaniappan availed mortgage loan of Rs.1,84,400/- agreeing to repay the same in 120 instalments, but after availing loan, the said member did not raise construction. Therefore, surcharge proceedings was initiated against the petitioner alleging that without inspection of property, loan was sanctioned. No opportunity was given to the petitioner and enquiry report and necessary documents were not furnished to the petitioner by the 2nd respondent before passing the surcharge proceedings. Therefore, the petitioner filed Appeal before the



learned Principal District judge, Salem, in CMA.C.S.No.4/2014.

However, the learned principal District Judge, dismissed the said appeal confirming the surcharge proceedings passed by the 2nd respondent.

Hence, the present civil revision petition.

3. (i) Learned counsel for the petitioner would state that the allegation in the surcharge proceedings is that after availing loan, the member did not raise construction, for which, the petitioner being a Special officer in the society could not be blamed. The duty of inspection of the site was vested with the supervisor who was working in the capacity of Co-operative Sub Registrar and not with the petitioner.

(ii) Learned counsel would further submit that the loan was against the mortgage of property and no loss has been caused to the society. There is no allegation of misappropriation or fraudulent retention of money or willful negligence by the petitioner and no ingredients of Section 87 of the Tamil Nadu Co-operative Societies Act are attracted in this case.

4. (i) Per contra, the learned Additional Government Pleader appearing for the respondents would state that the contention of the



learned counsel for the petitioner that there was no allegation of misappropriation or fraudulent retention of money or willful negligence by the petitioner, cannot be accepted. The actual allegation against the petitioner is that she had released the amount for a fraudulent purpose. The amount was not used for the purpose of raising any building but the same was used by the member for a fraudulent purpose. For every stage, the building should have been inspected and the petitioner should have inspected the progress of work of construction.

(ii) Learned counsel would further submit that the petitioner ought not to have released the amount to the member when he had not construct any house building in the vacant site. He would further submit that the petitioner, being the senior inspector/Special officer ought to have called for the report of site supervisor and acted accordingly but she had not done so. The member did not construct any house in the place mentioned by him. There is no infirmity in the order passed by the Principal District Judge. Hence, the civil revision petition is liable to be dismissed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.



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6. The petitioner has been accused of causing loss to the Society. It is not stated as to how the petitioner is responsible for the loss. The surcharge order passed by the Deputy Registrar of Cooperative Society does not reflect that there was any willful negligence or callous indifference on the part of the petitioner in discharging her duties so as to make her liable for surcharge under Section 87 of the Act.

7. This Court had on various occasions examined the scope of Section 87 of the Act. A Hon'ble Division Bench of this Court in Ajay Kumar Gosh and others V. Tribunal for Cooperative Cases – 2009 (4) MLJ 992, has held that in order to surcharge a person under Section 87, an employee of the Cooperative Society should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with supine indifference without taking due care and caution ordinarily expected from a reasonable and prudent man. However, if we examine the order of the Deputy Registrar surcharging the petitioner for the loss caused to the Society, the above ingredients are absent.



8. The order proceeds in a mechanical fashion saying that the petitioner had issued the cheques without proper inspection and the loanee has not put up construction as required, resulting in financial loss to the Society. Every case of non-repayment of the loan cannot provide a cause of action for surcharge under section 87 of the Act. Section 87 of the Act is an enabling provision, where there is a financial loss to the Society because of commission and omission of the employees, to recover the same by way of surcharge. The way in which the surcharging officer, namely, the Deputy Registrar of Cooperative Society has proceeded shows that he has mechanically initiated surcharge proceedings against the petitioner. He has not adverted to the requirements of Section 87 of the Act before passing the surcharge orders.

9. A reading of Section 87 of the Act would show that, in order to invoke the said Section, it must be shown that, “an officer or servant of the Society has mis-appropriated 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 the Act, Rules or by-laws”.

10. Therefore, apart from the fact showing that there has been a loss to the Society, the Surcharge Officer must go one step further and record a finding that such loss has been caused due to willful negligence or callous indifference on the part of the officer concerned. In the absence of such finding, as rightly contended by the learned counsel for the petitioner, surcharge proceedings cannot be sustained. Unfortunately, in the appeal, the learned Principal District Judge, Salem, has not considered this aspect.

11. In similar proceedings dated 01.11.2013, this Court passed an order in CRP.(NPD).Nos.428 & 429 of 2021 dated 29.11.2021 and in similar circumstances, this Court passed an order reported in CDJ 2019 MHC 4275 (D.Ganesan vs. The Commissioner of Sugar, Chennai & Others) and also passed orders in C.R.P.No.1214 of 2013 dated 18.11.2019 and C.R.P.Nos.19 to 22 of 2010, wherein it is held that unless willful negligence or callous indifference is established, proceedings



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under Section 87 cannot be sustained and the surcharge orders were set aside.

12. In view of the above, the Civil Revision Petition is allowed and the order dated 23.09.2019 passed by the learned Principal District Judge, Salem, in CMA(CS) No.4 of 2014, confirming the surcharge order passed by the 2nd respondent dated 01.11.2013, is hereby set aside. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Speaking /Non speaking order
vsi

To

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Salem.
2. The President,
Mettur Factories Employees
Co-operative Industrial Housing Society Ltd.,
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J.NISHA BANU, J.

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