



CRP.Nos.2116 & 2118 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Civil Revision Petition Nos.2116 & 2118 of 2021
and
C.M.P. Nos. 16105 and 16110

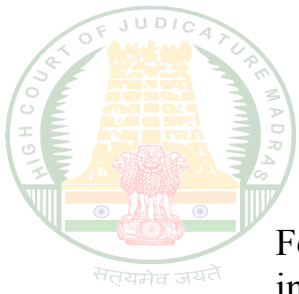
A.Rangarajan : Petitioner
in CRP.No.2116 of 2021

Mani : Petitioner
in CRP.No.2118 of 2021

Versus

1. The Deputy Registrar of Co-operative Societies (Credit), Kuralagam Complex, Chennai – 600 108.
 2. The Special Officer, Chennai Central Co-operative Bank Ltd., 215, Prakasam Salai, Chennai – 600 108.
- : Respondents
in both Civil Revision Petitions

Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the impugned order in CMA.Nos.22 & 23 of 2010 on the file of the learned Chief Judge, Small Causes Court, Chennai, dated 31.10.2019 by the Hon'ble Tribunal confirming the order passed by the Co-operative Society vide the proceeding R.C.No.8018/2007/SF1, dated 07.10.2008.



CRP.Nos.2116 & 2118 of 2021

WEB COPY

For Petitioner
in both C.R.Ps

: Mr. Ganapathy Thangavel

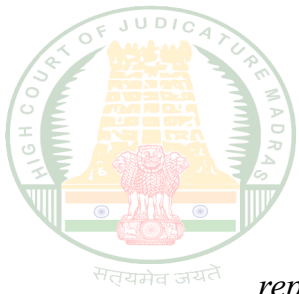
For Respondents
in both C.R.Ps

: Mr. V.Jeeva Giridharan
Additional Government Pleader for R-1
: Mr.M.S.Palanisamy for R-2

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the impugned order dated 31.10.2019 passed in CMA.Nos.22 & 23 of 2010 on the file of the learned Chief Judge, Small Causes Court, Chennai/Co-operative Societies Appellate Tribunal confirming the order passed by the Deputy Registrar of Co-operative Societies (Credit) vide the proceeding R.C.No.8018/2007/SF1, dated 07.10.2008.

2. The learned Counsel for the Revision Petitioners submits that after the Appeal in CMA.Nos.22 & 23 of 2010 was disposed by the learned Chief Judge, Small Causes Court, Chennai/Special Tribunal for Co-operative Society Cases vide judgment dated 28.08.2014, the Second Respondent in the Appeals filed W.P.Nos.7535 & 7536 of 2015 seeking to quash the judgment. This Court, after hearing both sides in W.P.Nos.7535 & 7536 of 2015, disposed of the Writ Petitions by order dated 31.07.2017 with the following observations:-



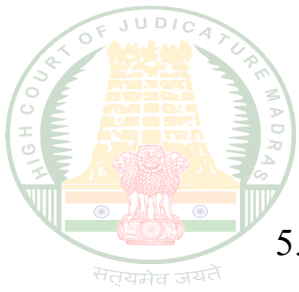
WEB COPY

“9. As far as the second contention of non-furnishing of the enquiry report is concerned, the Petitioner raised in the grounds of Appeal before the Tribunal that certain documents and enquiry report have not been furnished. Without considering the said ground, the Tribunal allowed the Appeal. Therefore, by considering the facts and circumstances, the Tribunal ought to have remitted back to the second Respondent to consider the matter afresh, after furnishing a copy of the enquiry report. The learned Counsel for the Respondents submitted that, in the event of remand to the Tribunal, an opportunity shall be given to the first Respondent in both the Writ Petitions to place all the facts before the Tribunal.

10. In view of the reasons stated above, the impugned common order passed by the Tribunal in C.M.A.Nos.22 and 23 of 2010, dated 28.08.2014 is set aside and the matter is remanded to the Tribunal to consider afresh and pass appropriate orders after providing opportunity to the parties. The first Respondent in both the Writ Petitions are at liberty to place all the facts before the Tribunal. With the above observations, the Writ Petitions are allowed.”

3. In spite of remitting the matter, the Special Tribunal had dismissed the appeals. Aggrieved by the same, the above Civil Revision Petitions had been filed.

4. The learned Additional Government Pleader appearing for the first Respondent vehemently opposed the submission of the learned Counsel for the Revision Petitioners stating that the direction given by the Hon'ble High Court was duly complied and these Civil Revision Petitions have no merits.



5. The learned Additional Government Pleader invited the attention

of this Court to the grounds of Appeal in CMA.No.23 of 2010. The relevant portion reads as follows:

“8. It is submitted that the enquiry report was not enclosed along with the surcharge notice. If the enquiry report is not enclosed or furnished, the entire proceedings are in violation of statutory provision and against the principle of natural justice, and the same is clearly stated in M.Sambantham Vs. Deputy Registrar (Credit) Chennai in 1999 III MLJ 310.”

6. The learned Additional Government Pleader invited the attention of this Court to the copy of the common order passed by this Court in W.P.Nos.7535 & 7536 of 2015, dated 31.07.2017. The relevant portion reads as follows:-

“9. As far as the second contention of non furnishing of the enquiry report is concerned, the Petitioner raised in the grounds of Appeal before the Tribunal that certain documents and enquiry report have not been furnished. Without considering the said ground, the Tribunal allowed the Appeal. Therefore, by considering the facts and circumstances, the Tribunal ought to have remitted back to the second Respondent to consider the matter afresh, after furnishing a copy of the enquiry report. The learned Counsel for the Respondents submitted that, in the event of remand to the Tribunal, an opportunity shall be given to the first Respondent in both the Writ Petitions to place all the facts before the Tribunal.”

7. Therefore, the subject matter was remanded to the Special Tribunal/Chief Judge, Court of Small Causes, Chennai, as Appellate Authority under the Co-operative Societies Act had rejected the contention of the learned



Counsel for the Revision Petitioners herein in para 13 to 15 of the order of the

learned Judge which is extracted hereunder:-

“13. In the earlier Order passed by this Tribunal on 28.08.2014 by the 1st Respondent on 07.10.2008 was set aside. In that order there are two points established on the ground of limitation i.e., (1) surcharge proceedings of the 1st Respondent was not completed within the period of six months as contemplated U/s. 87 of the Tamil Nadu Co-operative Societies Act (2) the Appeal Court proceeded on the basis of not furnishing the copy of the enquiry proceedings to the Appellants. Subsequent to the remand order passed by the Hon'ble High Court dated 31.07.2017, the copy of the enquiry proceedings was furnished to the Appellants in the Appeal proceedings. In respect of point of limitation, the learned Counsel for the 2nd Respondent as well as the learned Government Pleader has submitted that in view of the case reported in (2008) 8 MLJ 231 Shasraman Vs. Deputy Registrar of Co-operative Societies, Tiruvannamalai in which it was discussed that time is not a regulatory as per the co-operative societies Act and also discussed about the Division Bench Decision and arrived about the point of limitation in the Judgment itself and finally given a finding that the time period was thus, held not to be mandatory and also given a finding that the misappropriation of public funds are involved and the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit and thus, holding such enquiry as time barred would be great injustice and the time period was, thus, held not to be mandatory.

14. As such the time limit hold for the enquiry in respect of misappropriation of public funds by the Appellants are not to be a mandatory one and the same was also considered by the Hon'ble High Court and has given a finding in this regard. The lapse of furnishing the enquiry report to the Appellants was also cured by way of furnishing the copy of enquiry report to the Appellants, subsequent to the remand order passed by the Hon'ble High Court and due opportunity was also given to both the Appellants as well as the Respondents in the Appeals and both the Appellants have also submitted their arguments in this regard.

15. On perusal of records, it was brought to the knowledge of the Court that subsequent to the enquiry report in the surcharge proceedings, the execution proceedings was initiated and the properties of the Appellants were also attached and sale was also completed in this matter and it was also not challenged by the Appellants and there is no stay by



WEB COPY

the Appellate Court to stop the proceedings of the enquiry report. Hence, the 2nd Respondent have initiated the proceedings in which they have brought the properties of the Appellants for auction sale and recovered the misappropriated amount as per the Order passed by the 1st Respondent in the surcharge proceedings against the Appellants. U/s.87 of the Tamil Nadu Co-operative Societies Act, 1983, the surcharge proceedings have also properly done by the 1st Respondent after giving due notice to the Appellants and also given opportunity to contest the enquiry proceedings by the 1st Respondent. After giving opportunity to the Appellants, the 1st Respondent has given finings and passed final order on 07.10.2008. Under such circumstances on facts as well as on law, this Court finds no infirmities in the surcharge order passed by the 1st Respondent. Thus, this Court finds no merits in these Appeals and finds the same deserves to be dismissed. Thus, the Points 1 to 3 are decided as against the Appellants."

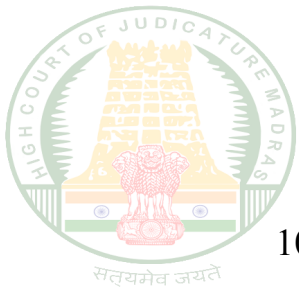
Therefore, he prayed for dismissal of these Civil Revision Petitions.

Point for consideration:

Whether the finding of the learned Chief Judge, Court of Small Causes as Appellate Tribunal under the Co-operative Societies Act in dismissing the Appeals preferred by the Revision Petitioners in CMA.Nos.22 and 23 of 2010 is perverse?

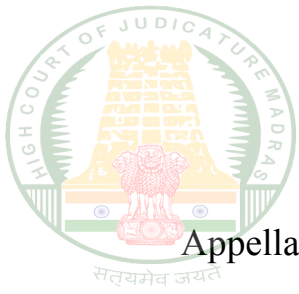
8. Heard the learned Counsel for the Revision Petitioners, the learned Additional Government Pleader for the first Respondent and the learned Counsel for the second Respondent.

9. Perused the Judgment passed by the learned Chief Judge, Court of Small Causes, Chennai, as Appellate Tribunal under the Co-operative Societies Act in CMA.Nos.22 and 23 of 2010, dated 31.10.2019.



CRP.Nos.2116 & 2118 of 2021

10. On perusal of the Judgment, it is found that the learned Judge relying upon the decision of the Hon'ble Division Bench of this Court in ***(2008) 8 MLJ 231 Sahasranamam Vs. Deputy Registrar of Co-operative Societies, Tiruvannamalai***, observed that the enquiries under surcharge proceeding has to be completed within a reasonable period of six months is not mandatory. The time limit is not mandatory. Also, the learned Judge had arrived at a conclusion that the non-furnishing of enquiry report regarding the preliminary enquiry held under Section 81 of the Co-operative Societies Act was set right by furnishing copies after the matter was remanded by the Hon'ble High Court. Therefore, the Appellants are not prejudiced. The purpose of serving the copy of the enquiry report to the affected party, the delinquent is to cross-examine the witnesses when the witnesses are examined during surcharge proceedings. After surcharge proceedings, furnishing the copies will not rectify the defect. Therefore, either the subject matter ought to have been remanded after setting aside the surcharge proceeding. Instead the learned Judge had erred in holding that the surcharge enquiry proceeding need not be concluded within six months based on the ruling of the Hon'ble Division Bench of this Court reported in ***(2008) 8 MLJ 231 Sahasranamam Vs. Deputy Registrar of Co-operative Societies, Tiruvannamalai***. Further, stating that the copies of the enquiry report had been furnished to the

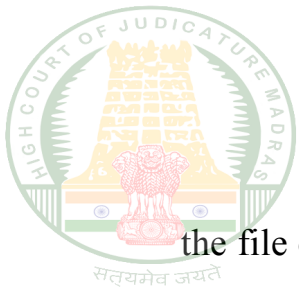


CRP.Nos.2116 & 2118 of 2021

Appellants before the learned Chief Judge, Court of Small Causes. That will not help the Appellants as delinquents before the surcharge proceeding as the surcharge proceeding had already been completed. Instead of setting aside the surcharge proceeding, the learned Judge had dismissed the Appeals which is erroneous. Therefore, the Judgment of the learned Chief Judge, Court of Small Causes by common Judgment in CMA.Nos.22 and 23 of 2010 are perverse and is to be set aside. After 16 years, the subject matter cannot be remanded. Hence, the surcharge proceedings are set aside as vitiated by not following procedure under the Co-operative Societies Act in a fair and transparent manner.

11. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The finding of the learned Chief Judge, Court of Small Causes, Chennai, as Appellate Tribunal under the Co-operative Societies Act in dismissing the Appeals preferred by the Revision Petitioners in CMA.Nos.22 and 23 of 2010 is found perverse and the same is to be set aside.

In the result, ***these Civil Revision Petitions are allowed.*** The impugned judgment dated 31.10.2019 passed in CMA.Nos.22 & 23 of 2010 on



CRP.Nos.2116 & 2118 of 2021

the file of the learned Chief Judge, Small Causes Court, Chennai as Appellate

WEB COPY

Tribunal under the Co-operative Societies Act confirming the order passed by

the Deputy Registrar of Co-operative Society vide the proceeding

R.C.No.8018/2007/SF1, dated 07.10.2008 is set aside. No costs.

Consequently, connected miscellaneous petitions are closed.

29.11.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh

To

- 1.The Chief Judge,
Small Causes Court,
Chennai.
- 2.The Deputy Registrar of Co-operative
Societies (Credit), Kuralagam Complex,
Chennai – 600 108.
- 3.The Special Officer,
Chennai Central Co-operative Bank Ltd.,
215, Prakasam Salai,
Chennai – 600 108.
- 4.The Section Officer,
Vernacular Records,
High Court Madras.



WEB COPY



CRP.Nos.2116 & 2118 of 2021

SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Common Order made in
CRP.Nos.2116 & 2118 of 2021

29.11.2024