



C.R.P.No.1809 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P.No.1809 of 2023

The Special Officer,
Rep. by Ponneri Urban Credit Society JJ64,
No.5, Nili Appa Durai Mudali Street,
Ponneri 601 204.

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Taluk Office Road,
Ponneri Post and Taluk - 601 204.

2.P.Sundaramurthy

... Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Civil Procedure Code, to set aside the judgment and decree dated 30.04.2008 on the file of the Principal District Judge, Co-operative Tribunal, Tiruvallur Post & District made in CMA.No.6 of 2006 and confirm the order made in Na.Ka.No.4176/99 A1 dated 02.01.2000 on the file of the respondent.

For Petitioner : Mr.P.S.Sivashanmugasundaram
For Respondents : Mr.V.Ramesh, GA for R1
Mr.S.Parthasarathy for R2

ORDER



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This Civil Revision Petition is filed to set aside the judgment and decree dated 30.04.2008 on the file of the Principal District Judge, Co-operative Tribunal, Tiruvallur Post & District made in CMA.No.6 of 2006 and confirm the order made in Na.Ka.No.4176/99 A1 dated 02.01.2000 on the file of the first respondent.

2. Heard Mr.P.S.Sivashanmugasundaram, learned counsel for the petitioner, Mr.V.Ramesh, learned Government Advocate for R1 and Mr.S.Parthasarathy, learned counsel for R2 and perused the materials available on record.

3. The second respondent who was working as a Cashier in the petitioner Society has been given with the charges of misappropriation, forgery and that he has acted in connivance with the Secretary Selvaraj and Accountant Panneerselvam and thereby swindled a sum of Rs.5,04,820/-. Section 87 proceedings were initiated against the second respondent and others and at the conclusion of the said proceedings, it has been determined that the second respondent has jointly and severally had caused a loss of Rs.2,31,820/- and hence, he is jointly and severally



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liable to pay the said sum. Challenging the above order, the second respondent has preferred a Civil Miscellaneous Appeal in CMA.No.4 of 2001 before the District Court, Chengalpet and after bifurcation, it was transferred to the file of the learned Principal District Judge, Tiruvallur and re-numbered as CMA.No.6 of 2006. The said appeal was allowed. Now, the petitioner Society has filed this Civil Revision Petition challenging the above order passed by the learned Principal District Judge, Tiruvallur.

4. The learned counsel for the petitioner submitted that the appellate authority without properly appreciating the materials available on record, had released the second respondent from the liability of paying the amount determined as a loss caused to the Society. It is further submitted that all cash transaction were floated through him as he was a Cashier in the petitioner Society. But the learned Principal District Judge has recorded that the second respondent has acted only on the orders of the Secretary Selvaraj, which is not correct. He further submitted that the public funds have been misappropriated by the second respondent by



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working hand in glove with the Secretary and Accountant.

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5. The learned counsel for the second respondent submitted that all the alleged mismanagement had taken place when the Secretary Selvaraj was in service. After 1997, Selvaraj had absconded. The manipulation of the records would show the handwriting of the Secretary Selvaraj. It is further submitted that the petitioner Society has chosen to raise this issue only after a lapse of four years. The alleged occurrence is said to have taken place between the period from 1996 to 1997. So it is claimed that this Civil Revision Petition is affected by delay and laches.

6. On perusal of the records and the appreciation made by the appellate authority, it is seen that the second respondent being a Cashier, cannot do independent money transaction without the instructions of the Secretary. In fact, in the criminal case registered against the second respondent and others, it is seen that the second respondent got discharged. While dealing with the charges against the second respondent individually, the learned Trial Judge has observed that even for the first



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fraudulent transaction of Rs.1,20,000/-, it was the Secretary who had manipulated the records. As far as the allegation of misappropriation of Rs.1,03,000/- is concerned, it is said to be the fixed deposit invested by the member of the Society by name Mohaideen Sahib on 24.02.1997. He has also invested another fixed deposit for Rs.70,000/-. Even before the maturity period, the said amount has been misappropriated by way of producing false receipts. Without the Secretary's signature authorising the payment, the Cashier cannot make any disbursal of the amount, even though the Cashier is in charge of the money which was brought and disbursed from the Society. The Cashier cannot make any disbursal without the orders of the superior *viz.*, the Secretary.

7. The charge does not state that the second respondent had forged someone's signature and thereby withdrawn the amount or he had misappropriated the said sum for his own interest. In fact, the whole of the records relate to the second charge. The relevant entries have been made only in the handwriting of the Secretary Selvaraj. Just because the second respondent is the Cashier of the petitioner's Society, he cannot be



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held liable for the loss though he was acting vigilantly. Since the Secretary has authorised the payments, the second respondent who is subordinate to him, cannot refuse the same. So far as the second respondent is concerned, before making payments, he should be given with the vouchers and those vouchers were given to the second respondent. The second respondent has got no other go except to disburse the amount.

8. The other charge pertains to a sum of Rs.2,31,820/-. The second respondent had stated in his counter that the amount was disbursed by the second respondent across the counter. The one and only problem for the second respondent is that he was also working during the same time when the Secretary Selvaraj was working. As the appropriate authority did not appreciate the matter in a relevant perspective, the above defect has been rectified by the appellate authority by making a thorough observation in the order.

9. So far as the delay in filing this Revision is concerned, it is



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claimed by the learned counsel for the petitioner that in 87 proceedings, the delay cannot be fatal against the petitioner. It is submitted that the money involved is public money and the second respondent cannot claim shelter under the limitation. In fact, there is no limitation for filing the Civil Revision Petition, though it was admitted that it has been filed after four years from the date of surcharge proceedings initiated by the learned Principal District Judge. Since the order of the appellate authority has been passed only after properly appreciating the *rationale* applicable to the facts of the case and thus, the Civil Miscellaneous Appeal was allowed.

10. Since the second respondent who does not have the power to take independent decision with regard to money matters, cannot be found fault for the mistakes / crimes done by the other persons. As the Lower Appellate Court has properly appreciated the evidence on record and arrived at a conclusion that the proceedings issued against the second respondent is not maintainable, I do not find any reason for interference.



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11. In view of the above observations, this Civil Revision Petition is

dismissed. No costs.

Index : Yes /No

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Speaking / Non-speaking

Neutral Citation : Yes / No

gsk



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To

- 1.The Principal District Judge,
Co-operative Tribunal, Tiruvallur
Post & District.
- 2.The Deputy Registrar of Co-operative Societies,
Taluk Office Road,
Ponneri Post and Taluk - 601 204.



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R.N.MANJULA, J.

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