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C.R.P.No.2433 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

C.R.P. No.2433 of 2023
and C.M.P.Nos.15200 of 2023

A.Kumar

...

Petitioner

/vs/

1. The Deputy Registrar of Co-operative Societies,
Cuddalore.

2. The Special Officer / President,
Pudupettai Primary Agricultural Co-operative Societies,
Pudupettai, Cuddalore. ... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 06.02.2019 made in CMA (CS) No.35 of 2002 on surcharge order passed by the first respondent in Na.Ka.7259/2001 Ku.Na. Dated 26.02.2002.

For Petitioner ... Mr.P.K.Shiva Kumar

For R1 & R2 ... Mr.N.Muthuvel
Government Advocate

ORDER



C.R.P.No.2433 of 2023

This Civil Revision Petition has been filed by the petitioner challenging the order of the Principal District Judge, Cuddalore dated 06.02.2019 made in C.M.A.(CS) No.35 of 2002.

2. The award has been passed in view of the direction given by this Court in W.P. No.39198 of 2005 dated 12.09.2017. In fact the writ petition in W.P. No.39198 of 2005 has been filed by the petitioner who was the President of the respondent society between the year 1996 to 2001, for challenging the earlier order of the Tribunal dated 01.09.2005 made in the very same C.M.A.(CS) No.35 of 2002. During the pendency of the writ petition it has been represented before the Court that the individual against whom the allegation of misappropriation has been made has repaid the entire surcharge amount. After recording the above submission, the Court thought it fit to remand the matter back to the file of the Tribunal in order to decide whether any balance amount is due to be payable to the Society. Now the impugned order has been passed basing upon the calculation memo filed by the second respondent society. The said calculation is inclusive of interest to be payable on the surcharge amount of Rs.13,59,028/-.



3. From the calculation memo it appears that a sum of Rs.10,47,000/- and Rs.3,12,320/- has been recovered from Thangaiyan, Subramanian and Sampath who were working as Secretary, Cashier and Clerk respectively, by cash and through auction proceedings initiated against the immovable properties belonged to Thangaiyan and Subramanian. Totally a sum of Rs.13,59,028/- has been recovered. Even though a sum of Rs.3,57,813/- has also been formed part of the surcharge order, from the calculation memo it is seen that the said amount has been discharged from the surcharge liability. As such, the calculation memo would show that the entire surcharge amount has been paid by three individuals by name Thangaiyan, Subramanian and Sampath.

4. The petitioner was the President during the relevant point of time and hence it is alleged by the respondent society that he ought to have collected interest from the individuals who have suffered the surcharge order on the surcharge amount paid by them. Only by calculating the above interest element, it is seen that a sum of Rs.48,76,271/- has been arrived as the remaining amount recoverable from the petitioner. Admittedly no surcharge proceedings has been initiated on this account against the petitioner and no



C.R.P.No.2433 of 2023

surcharge order has been passed. The respondents at their convenience have worked out interest @ 21% on the surcharge amount and fastened the liability on the petitioner that he was negligent in not collecting the interest amount.

5. The learned counsel for the petitioner submitted that the omission to collect interest on the surcharge amount at the best can be considered as a supervisory omission or negligence and it cannot be categorized as wilful negligence.

6. Even the respondent society has not alleged that the petitioner had enjoyed any unlawful enrichment for himself by preferring not to collect the mandatory interest payable on the surcharge amount. Even for the sake of argument if the petitioner is mulct with the liability to pay interest on the surcharge amount, that can be made only by initiating surcharge proceedings and after giving opportunity to the petitioner to make his submissions in this regard.

7. The alleged pendency shown in the memo submitted by the respondent before the Tribunal is only imaginary and the liability of which



C.R.P.No.2433 of 2023

has not been determined through any surcharge proceedings. The individuals have paid the surcharge amount as they have been found liable to pay the interest as well. But the learned Principal Judge failed to consider these facts before passing an order holding that the petitioner is liable to pay a sum of Rs.47,89,000/- and the surcharge amount is payable by him.

8. In view of the same, the Civil Revision Petition is allowed and impugned order dated 06.02.2019 made in C.M.A.(CS) No.35/2002 on the file of the learned Principal District Judge, Cuddalore, is hereby set aside. No costs. Connected miscellaneous petition is closed.

18.10.2024

Index: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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C.R.P.No.2433 of 2023

R.N.MANJULA ,J.

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To:

1. The Deputy Registrar of Co-operative Societies,
Cuddalore.
2. The Special Officer / President,
Pudupettai Primary Agricultural Co-operative Societies,
Pudupettai, Cuddalore.

C.R.P.No.2433 of 2023

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