IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP No.4618 of 2024 and
CMP No.25833 of 2024

J.Jayakumar ... Petitioner

Vs.

1. The Surcharge Officer,
   Deputy Registrar of Cooperative Societies,
   Vellore Zone, Vellore 632 001.

2. The Joint Registrar of Cooperative Societies,
   Vellore Zone, Vellore 632 001.

3. The Joint Registrar of Cooperative Societies,
   Vellore District Central Cooperative
   Bank Limited, Vellore 632 001.

4. The General Manager,
   Vellore District Cooperative Bank Limited,
   Vellore 632 001. ...

Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the judgment and decree dated 30.09.2024 made in CMA (CTA) No.11 of 2021 passed by the learned Principal District

Judge/ Presiding Officer, Cooperative Tribunal, Vellore District, confirming the surcharge order dated 01.09.2021 made in S.C.No.01/2021-22/Sa.Pa. passed by the first respondent by allowing the civil revision petition.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.D.Gopal, Government Advocate

ORDER

Challenge has been made as against the judgment and decree dated 30.09.2024 made in CMA (CTA) No.11 of 2021 by the learned Principal District Judge/ Presiding Officer, Cooperative Tribunal, Vellore District, confirming the surcharge order dated 01.09.2021 made in S.C.No.01/2021-22 by the first respondent.

2. The facts leading to the filing of the present petition is as follows:

The petitioner was appointed as Assistant Manager in the Vellore Central cooperative Bank on 16.04.2008. Thereafter, he was promoted as Manager and holding the said position from 01.12.2011 to 31.08.2016. Subsequently, charges framed against the petitioner, stating that during his tenure, a sum of Rs.4,80,575/- was granted to him towards small trade loans, however, he has not taken any steps to recover the said amount from the borrowers. As such, enquiry under Section 81 of the Co-operative Societies Act was conducted and after enquiry, a report was filed by the enquiry officer on 08.09.2020. Pursuant to the same, it appears that surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act was also initiated and the petitioner was directed to pay the said amount with penal interest, vide impugned order dated 01.09.2021 and the same was confirmed by the appellate authority/Tribunal. Hence the instant civil revision petition.

3. Learned counsel for the petitioner mainly would submit that to hold the surcharge against any person, it has to be established that deliberate and wilful action of that person was the cause to the loss of asset of the society, whereas, in this case, no evidence whatsoever available to show that the petitioner acted in willful and negligent manner. Further, it is his contention that the petitioner was transferred to the fourth respondent bank on 01.09.2016 itself and thereafter, he

has no role over the society and in such circumstances, action ought to have been proceeded against the branch managers, who have come in that place subsequently. He also submitted that, though limitation is not a bar for recovery of loan, the Registrar shall admit the claim even after expiry of time, if the applicant gives sufficient cause. Hence, he would submit that, as there is no oral and documentary evidence available to substantiate the allegations levelled against the petitioner, the impugned order passed by the Tribunal is liable to be set aside and consequently, the surcharge order passed by the respondent is also liable to be set aside.

4. Learned counsel for the respondent would submit that only on the basis of inaction on the part of the official/civil revision petitioner, loans could not be recovered and for the same, surcharge proceeding was initiated. As such, the order passed by the Tribunal/appellate authority, confirming the surcharge order, dated 01.09.2021 does not require any interference by this court.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and I have perused the materials on record.

6. As against the petitioner, enquiry was conducted under Section 81 of the Co-operative Societies Act on the ground that, after sanctioning of loan to the small traders, he has not taken any steps to recover the amount in time from the borrowers. It is not disputed that the revision petitioner was working as Branch Manager from 01.12.2011 to 31.08.2016 and during his tenure, he had sanctioned Small Traders loans to the tune of Rs.4,80,575/- to six persons and thereafter, he was transferred to the fourth respondent bank on 01.09.2016. Though he has not taken any steps immediately to recover the loan amount either by arbitration proceedings or some other proceedings, the facts remains that the revision petitioner was transferred on 01.09.2016 itself. As far as the recovery of the loan amount is concerned, though limitation is applicable, the proviso to Section 90(9) (b) of the Act clearly says that notwithstanding anything contained in the Act for limitation, the Registrar may admit the claim, if the applicant satisfies the Registrar that he had sufficient cause for not

referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired. In such circumstances, to fasten the liability on the person, the requirements for initiation of surcharge proceedings under Section 87 of the Act must be established; and the person must be acted in a manner of willful negligence to cause loss to the assets of the society. Therefore, mere inaction on the part of the employee would not suffice to proceed surcharge proceedings against that person.

7. At this juncture, it is worthwhile to note that, in the case of ***S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others reported in 2016 - 4 - L.W. 452 (W.A.No.1213 of 2008, dated 05.08.2016***, arising out of the dispute with regard to the loss caused to the Society, inview of willful negligence on the part of the appellant, a Division Bench of this Court held as follows.

Issue No.3 : Willful negligence

25.The third and the last plea is actually the most crucial as to whether the appellant could be said to have acted with willful negligence. In this behalf, the learned counsel for the appellant has relied upon two judgments of this Court in S.Subramanian vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore & others, 2002-3-L.W. 185, and K.Ajay Kumar Gosh and Others vs. Tribunal for Co-operative Cases, (2009) 4 MLJ 992, to contend that when requirements of Section 87 had not been satisfied, which warrants initiation of surcharge proceedings, the liability cannot be fastened. There has to be willful and wanton premeditation with a view to cause loss to the assets of the Society and "mere negligence cannot be a ground for surcharge and it must be willful negligence or intentional negligence and not mere carelessness or intention or inadvertence or a single lapse by oversight". We extract the observations in the case of K.Ajay Kumar Gosh, supra, as hereunder:

> "19.A detailed discussion has been made by making reference to various judgments on this aspect in another judgment reported in Sathyamangalam Cooperative Urban Bank Ltd. vs. Deputy Registrar of Cooperative Society and Another, (1980) 2 MLJ 17, it is held thus:
>
> "The degree of negligence that is contemplated under Section 71 (1) of the Tamil Nadu Cooperative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' imports pre-meditation or knowledge

and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless disregard of probable consequences, a wilful wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss sustained."

20.In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the Respondents, it is not possible to mulct the appellants with the loss caused to the society."

26.We are, thus, of the view that as the legal principles are quite settled, we have to only look into the application of the same in the facts of the present case. We are of the view that the appellate authority was right in coming to the conclusion that there is no willful negligence in the case of the appellant and this aspect has really not even been seriously touched upon by the learned Single Judge. Merely because loss is caused would not suffice. The appellant is not the beneficiary. There is no such willful negligence attributed to her. This is apparent from even the enquiry report, which we have referred to aforesaid. Mere use of the words "negligence and careless with selfish motive for gain" would not suffice when actually the facts do not make out such a case. Thus, the surcharge officer certainly fell into an error in imposing the liability on the appellant. The enquiry report discussed aforesaid itself shows that it is the third respondent who is found to have taken advantage of the situation in seeking to obtain illegal gain for himself. The pay bill was prepared by the third respondent in the computer and the abstract of the department wise pay bill alone used to be furnished to the Accountant and the Chief Accountant (appellant) and signatures obtained. Thus, both of them had been signing on the department wise pay bill abstract without seeing the pay bills. The third respondent / Mr.A.Kabali, thus, took advantage of the fact that it was not possible for others to verify the cheques and test the salary list which was running into 300 pages. It is in these circumstances that the fourth respondent has been exonerated of the liability even though the abstract pay bill was required to be verified by him as an Accountant and he alone was supervising each and every matter. The cheques signed by the appellant are actually in the nature of counter-signature and the Accountant himself had been exonerated. Merely because the appellant was the head of the department, the liability could not be fastened on her as no case of willful negligence is made out.

8. In the instant case, no evidence was adduced during the enquiry under Section 87 of the Act to prove the wilful negligence on the part of the civil revision petitioner. Further more, it is not established that there was willfull act in a deliberate manner by the civil revision petitioner, which was the cause for loss to the society, the respondents have not initiated any suit proceedings during his tenure. In such circumstances, mere negligence or inaction on the part of the petitioner, will not amount to willful negligence.

9. Inview of the foregoing discussion, this court is of the view that the respondents have not made out a case of willful negligence on the part of the petitioner to cause loss to the society and hence, the surcharge order passed by the first respondent and confirmed by the

appellate authority are liable to be set aside.

10. Accordingly, this civil revision petition is allowed and the impugned order passed by the learned Principal District Judge, Cooperative Tribunal, Vellore in CMA (CTA) No.11/2021, dated 30.09.2024, confirming the surcharge order dated 01.09.2021 passed by the first respondent is set aside. There shall be no order as to costs. connected miscellaneous petition is closed.

02.12.2024

Index:Yes/No
Internet:Yes/No
mst

To

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N.SATHISH KUMAR, J.

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