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W.A.No.1589 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.1589 of 2022
and
C.M.P.No.9712 of 2022

M.Krishnaraj

... Appellant/Petitioner

-VS-

1. The Deputy Registrar,
O/o.The Deputy Registrar of Co.op Societies,
Gobichettipalayam Circle,
Pudupalayam Post,
Gobichettipalayam Taluk,
Erode District.
2. The Special Officer,
A.A.553, Sathyamangalam Primary Agricultural
Co.Operative Bank Ltd.,
Sathyamangalam, Sathyamangalam Taluk,
Erode District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.04.2016 passed in W.P.No.3438 of 2014.

For Appellant : Mr.R.Marudhachalamurthy

For R1 : Mrs.Geetha Thamaraiselvan
Spl. Govt. Pleader

For R2 : Mr.Ma.P.Thangavel



W.A.No.1500 of 2014

J U D G M E N T

(By D.Krishnakumar,J.,)

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This Writ Appeal has been filed, challenging the order of the learned Single Judge dated 01.04.2016 passed in W.P.No.3438 of 2014, by which the Writ Petition filed by the Writ Petitioner/Appellant herein was dismissed, upholding the order of surcharge and judgment of the Tribunal.

2. It is the case of the Writ Petitioner/Appellant herein that the Bank, namely, AA553 Sathyamangalam Primary Agricultural Cooperative Bank, which is a Society governed by the provisions of the Tamil Nadu Cooperative Societies Act, 1983 (in short 'TNCS Act, 1983'), was initially under the administration of the Elected Board and thereafter, was under the control of the Special Officer. The petitioner, being the Secretary of the Bank, was suspended from service on 18.08.2003 for causing a loss to the tune of Rs.3,78,419/- and on the basis of the report dated 09.03.2004, a surcharge enquiry under Section 87(1) of the TNCS Act, 1983, was initiated and an order was passed on 03.11.2008, fixing liability on the petitioner and the Manager of the Bank and for recovery of Rs.1,75,612/- with 21% interest.

3. It is further case of the appellant that in the appeal filed in C.M.A.No.62 of 2009 before the Principal District Judge / Special Tribunal, the order of recovery was upheld on 17.09.2012, against which, the appellant had filed W.P.No.3438 of 2014



(order under challenge), stating that though he had remitted Rs.2,08,000/- much prior to the surcharge notice dated 29.06.2004, it was the 1st respondent, who did not choose to give credit to the payments, so as to fix the entire liability on him. It is also the case of the appellant that the learned Single Judge dismissed the Writ Petition on the ground that the documents were manipulated and tampered, while he was a Clerk and his conduct was deliberate and wilful. Aggrieved by such findings, the appellant is before this Court.

4. Learned counsel appearing for the 2nd respondent contended that surcharge proceedings have been initiated against the appellant for the loss of Rs.3,78,419/- and out of the said amount, a sum of Rs.2,02,807/- had already been recovered from him and the balance amount of Rs.1,75,612/- is due from the appellant. He further contended that learned Single Judge has considered all the aspects in details and dismissed the Writ Petition, holding that the order passed in the surcharge is perfectly valid and therefore, no interference is warranted in the order of the learned Single Judge.

5. Heard the learned counsel on either side.

6. On going through the order of the learned Single Judge, it is seen that the



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appellant, in connivance with other employees sanctioned crop loans to persons, who were not eligible for the same and also wantonly created fake documents for disbursement of loans. The act of the appellant cannot be taken slightly, as he had caused huge loss to the Bank. Moreover, the finding of facts recorded by the 1st respondent and the Tribunal cannot be re-appreciated by this Court unless it is violative of fundamental rights guaranteed under the Constitution of India. As per the mandate of surcharge enquiry under Section 87(1) of the TNCS Act, 1983, the procedures as adumbrated under Section 87(4) of the TNCS Act, 1983 have been duly followed by the respondents and Section 87(4) reads as follows:

“87 (4) - The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any Court or office;
- (e) issuing Commission for examining of witnesses.”

7. From the above, we are able to come to the conclusion that there is no violation of principles of natural justice and other violations, deviating the Rules or Regulations made thereunder. Under such circumstances, we do not find sufficient reasons or ground or merits to interfere with the order of the learned Single Judge and



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we have no hesitation to uphold the order impugned herein.

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8. In the result, this Writ Appeal is dismissed. Needless to state that it is open to the respondents to recover the balance amount from the appellant in the manner known to law by following due procedures. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J.,]

[K.B., J]

27.06.2024

Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order
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To:

The Deputy Registrar,
O/o.The Deputy Registrar of Co.op Societies,
Gobichettipalayam Circle,
Pudupalayam Post,
Gobichettipalayam Taluk,
Erode District.



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