



C.R.P.No.1933 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 14.06.2023

Pronounced on 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1933 of 2021

The Management of
P.G.27, Thookkanaickenpalayam
General Workers Co-operative Thrift
And Credit Society,
Thookkanaickenpalayam,
Gopi Taluk, Erode District. ...Petitioner/2nd Respondent

-Vs-

1.V.Senthilkumar ...1st Respondent/Applicant
2.The Deputy Registrar of Cooperative Societies,
Gopi Circle,
Gopichettipalayam,
Erode District. ...2nd Respondent/1st Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India, against the order passed in CMA(CS)No.81 of 2009 dated 28.04.2018 by the learned Co-operative Tribunal, Erode, (Principal District Court, Erode) by reversing the surcharge order passed by the 2nd Respondent-Deputy Registrar, Co-operative Societies, Gobichettipalayam, in Na.Ka.No.1776 of 2005 Sa.Pa dated 21.11.2008.



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For Petitioner : Mr.L.P.Shanmugasundaram
For R1 : Mr.E.P.Senniyangiri
For R2 : Mr.V.Jeevagiridharan,
Additional Government Pleader

ORDER

This Civil Revision Petition is filed by the 2nd Respondent in C.M.A(C.S)No.81 of 2009 before the learned Co-operative Tribunal, Erode, (Principal District Court, Erode), who is the Revision Petitioner herein.

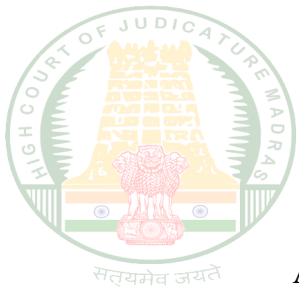
2.Brief facts which are relevant to decide this Civil Revision Petition are as follows:-

(a) The 1st Respondent herein was the Secretary of the 2nd Respondent Co-operative Society. While so, the Deputy Registrar of Co-operative Society is stated to have received complaints that the 1st Respondent was engaged in certain financial malpractices, affecting the interest of the Society. This was followed by an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, following which surcharge proceedings were initiated against the 1st Respondent.



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- (b) On 31.05.2004, a surcharge order was made, in which, the 1st Respondent was found guilty of causing financial loss to the 2nd Respondent due to his willful acts and commission and omission to a tune of Rs.28,48,551/- and this liability was fastened on him. This was challenged by the 1st Respondent in C.M.A(C.S)No.5 of 2004 before the Tribunal (Principal District Judge, Erode) vide order dated 31.03.2006, the Tribunal allowed the said Appeal, and remanded the matter back to the lower Tribunal and directed it to give necessary opportunity to the 1st Respondent and thereafter to pass appropriate orders. This led to the second surcharge order being passed on 21.11.2008, in which, the total liability earlier fixed was brought down to Rs.12,84,463/-. This was now challenged by the 1st Respondent in C.M.A(C.S) No.81 of 2009.
- (c) On 14.02.2011, C.M.A(C.S) No.81 of 2009 was allowed in which order of the Tribunal has held that no effective opportunity was still not seen to have been given to the 1st Respondent, and no documentary evidence of any kind was produced or cited in the surcharge proceedings to fasten liability on the 1st Respondent.



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Aggrieved by this order, the 2nd Respondent/Co-operative Society preferred W.P.No.4183 of 2012. This Court vide order dated 19.09.2017, allowed the Writ Petition and remanded the matter back to the Tribunal for re-hearing the matter.

(d) Accordingly, C.M.A(C.S)No.81 of 2009 came to be heard again and on 28.04.2018, it yet again allowed the Appeal almost on identical grounds, by which, the Appeal came to be dismissed in the earlier round. This order is now under challenge in this Civil Revision Petition.

3.The learned Counsel for the Revision Petitioner submitted that the 1st Respondent himself has volunteered to make a statement in writing, wherein, he had admitted to the liability. He had not pointed out that the 1st Respondent has impugned or challenged the said statement. When a fact is admitted, there is little need to prove it. The learned Counsel also tried to circulate a xerox copy of the said statement of the 1st Respondent. The learned Counsel for the 1st Respondent however, disputed the said statement.



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4.The learned Counsel for the Revision Petitioner is now required to file the typed set of papers containing a copy of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, followed by the first surcharge order dated 31.05.2004, the order passed in C.M.A.(C.S)No.5 of 2004, and the second surcharge order dated 21.11.2008 and the statement of the 1st Respondent as recorded that such materials which formed foundation for second surcharge proceedings.

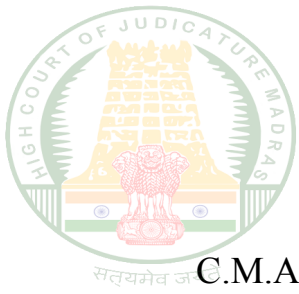
5.The learned Counsel for the Revision Petitioner further submitted that the Revision Petitioner is the Society. The 1st Respondent is the Secretary of the Society against whom surcharge proceedings were initiated. The 1st Respondent had approached the learned Principal District Judge, Erode, by filing C.M.A(CS)No.81 of 2009. The learned Principal District Judge, Erode, as the Appellate Authority has set aside the finding of the surcharge proceedings. Aggrieved by the same, the Society had filed W.P.No.33555 of 2018, which was subsequently converted into a Civil Revision Petition.



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6.The learned Counsel for the Revision Petitioner invited the attention of this Court to the observation made in the order passed by the learned Principal District Judge, Erode, which is against the provisions of the Co-operative Societies Act. Therefore, he seeks to set aside the order passed in C.M.A(C.S)No.81 of 2009, dated 28.04.2018.

7.Mr.E.P.SenniYangiri, learned Counsel for the 1st Respondent submitted that the 1st Respondent was serving as Secretary in the Revision Petitioner's Management of P.G.27, Thookkanaickenpalayam, General Workers Co-operative Thrift And Credit Society, Thookkanaickenpalayam, Gobi Taluk, Erode District. The 2nd Respondent /The Deputy Registrar of Cooperative Societies, Gobi Circle, Gobichettipalayam, Erode District, had initiated surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Originally, the surcharge order was passed against the Petitioner stating that the Petitioner is liable to pay Rs.28,48,551/-. Aggrieved by the same, C.M.A(C.S) No.81 of 2009 was filed by the 1st Respondent herein. Against the order passed by the learned Principal District Judge, Erode, in



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C.M.A(C.S)No.81 of 2009, the Petitioner herein had filed W.P.No.4183 of 2012 before this Court. This Court by order dated 19.09.2017 disposed of the Writ Petition directing the learned Principal District Judge, Erode, as Appellate Authority under the Tamil Nadu Co-operative Societies Act to dispose of C.M.A (C.S) No.81 of 2009 afresh. Again, the learned Principal District Judge, Erode, by judgment dated 28.04.2018, confirmed the earlier order. As against which W.P.No.33355 of 2018 was filed, which was subsequently converted by the Hon'ble High Court as Civil Revision Petition under Article 227 of the Constitution of India. The 2nd Respondent/The Deputy Registrar of Cooperative Societies, Gobi Circle, Gobichettipalayam, Erode District, conducted enquiry. The surcharge proceeding was not conducted as per the procedures stated in the Tamil Nadu Co-operative Societies Act, 1983.

8.The learned Counsel for the 1st Respondent further submitted that the 1st Respondent was the Secretary of the Revision Petitioner's Society. The Revision Petitioner's Society is still working. Those who had availed loans had repaid the loans and the Revision Petitioner's Society had not suffered any loss to proceed under Section 87 of the Tamil Nadu Co-



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operative Societies Act, 1983. The delinquent conduct should have been warranted negligence with an intention to cause loss. To hear those ingredients does not attract. Therefore, the order passed by the learned Principal District Judge, Erode, allowing the Appeal filed by the 1st Respondent in C.M.A(C.S)No.81 of 2009 dated 28.04.2018 does not warrant any interference by this Court exercising the extraordinary power of the Hon'ble High Court under Article 227 of the Constitution of India. Hence, the above Civil Revision Petition is to be dismissed.

9.Mr.V.Jeevagiridharan, learned Additional Government Pleader appearing for the 2nd Respondent submitted that the enquiry was conducted as per the Tamil Nadu Co-operative Societies Act, 1983 by affording opportunity to the 1st Respondent, the statement of the successor Secretary was recorded. The statement of the 1st Respondent as former Secretary of the Society was recorded. In the surcharge proceeding, the 1st Respondent did not choose to cross-examine the witnesses, he had perused all the documents relied on by the 2nd Respondent Enquiry Officer under the surcharge proceedings. Therefore, there is no valid ground for the 1st Respondent to raise in the Appeal. The Appeal in C.M.A(C.S)No.81 of



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2009 was misdirected and the order of the learned Principal District Judge, Erode, as Appellate Authority was perverse. Aggrieved by the same, the Management of P.G.27, Thookkanaickenpalayam, General Workers Co-operative Thrift And Credit Society, Thookkanaickenpalayam, Gobi Taluk, Erode District, had approached this Court by way of filing Writ Petition, which was subsequently renumbered as C.R.P.No.1933 of 2021.

10.The learned Additional Government Pleader appearing for the 2nd Respondent further submitted that he is the Deputy Registrar of Cooperative Societies, Gobi Circle, Gobichettipalayam, Erode District, and the learned Counsel for the Revision Petitioner seeks the indulgence of this Court to allow the Civil Revision Petition and to set aside the order passed by the learned Principal District Judge, Erode, as Appellate Authority under the Tamil Nadu Co-operative Societies Act, 1983, to set aside the order in C.M.A(C.S)No.81 of 2009 dated 28.04.2018.

11.Heard both sides. Perused the papers circulated and this Court identified two aspects that appeared to have influenced the approach of the Tribunal, when it disposed the C.M.A(C.S) No.81 of 2009. Firstly, there



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was no evidence worth mentioning produced to sustain the surcharge order, and beyond recording the statement of the 1st Respondent after remanding of the matter by the Tribunal in C.M.A(C.S) No.5 of 2004, nothing worthwhile was seen to have happened to justify the order. The learned Counsel for the Revision Petitioner is also required to justify as to how the liability of Rs.28,48,551/- suddenly was brought down to Rs.12,84,551/- in the second surcharge proceedings.

12.The learned Counsel for the Revision Petitioner submitted that the 2nd Respondent/The Deputy Registrar of Cooperative Societies, Gobi Circle, Gobichettipalayam, Erode District, did not conduct an independent enquiry by examining witnesses for the Department and marking documents in favour of the department and against the 1st Respondent. Only to settle scores and to wreck vengeance on the 1st Respondent. Surcharge proceedings had been ordered without affording the 1st Respondent the opportunity to cross-examine witnesses by summoning witnesses for marking documents favourable to the 1st Respondent and also questioning the witnesses in support of the department only when the 1st Respondent furnished documents.



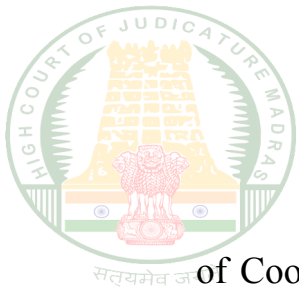
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13.In the first row of litigation, on the same enquiry proceeding, enquiry report for the enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, the 1st Respondent herein was fastened with liberty and liable to pay surcharge amount of Rs.28,48,551/-.

14.In the second row, after the Hon'ble High Court had disposed of the Writ Petition without any grant of liberty to the Petitioner *suo moto*, they had arrived at such amount which was also not disclosed. In short, the 2nd Respondent / The Deputy Registrar of Cooperative Societies, Gobi Circle, Gobichettipalayam, Erode District, had not conducted a fair and proper enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the finding and imposing surcharge penalty on the Petitioner is perverse and is to be set aside.

15.After the W.P.No.4183 of 2012 was ordered, the matter was remanded to the Appellate Authority under the Tamil Nadu Co-operative Societies Act. The learned Principal District Judge, Erode, had in the Appeal, set aside the finding of the 2nd Respondent/The Deputy Registrar



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of Cooperative Societies, Gobi Circle, Gobichettipalayam, Erode District, as it is perverse as the 2nd Respondent/The Deputy Registrar of Co-operative Societies, Gobi Circle, Gobichettipalayam, Erode District, had not conducted fair and proper enquiry as per the due procedures stated in the Tamil Nadu Co-operative Societies Act. Therefore, the learned Principal District Judge, Erode, by allowing C.M.A(C.S)No.81 of 2009 had set aside the order and the order passed by the learned Principal District Judge, Erode, does not warrant any interference by this Court by exercising the power of the Hon'ble High Court under Article 227 of the Constitution of India. This Civil Revision Petition has no merits and is to be dismissed.

16.Also, the learned Counsel for the 1st Respondent submitted that on an earlier occasion, when the Civil Revision Petition was posted before the earlier Judge presiding over this Bench, the learned Principal District Judge, Erode, had raised a query under what circumstances the earlier surcharge penalty of Rs.28,48,551/- was reduced to Rs.12,84,551/-. The 2nd Respondent/The Deputy Registrar of Cooperative Societies, Gobi Circle, Gobichettipalayam, Erode District, through their Counsel took time



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and furnished a bunch of documents before this Bench to satisfy the learned Judge of this Court. It is not permissible when the Civil Revision Petition is heard, as those bunch of documents were not at all furnished to the 1st Respondent during the enquiry by the 2nd Respondent. Therefore, the proceedings are unfair and vitiated with malice, *mala fide* and wreck vengeance. Due to the surcharge proceeding imposed by the 2nd Respondent, the 1st Respondent herein was removed from service and he was out of service for more than 15 years. Therefore, the order passed by the learned Principal District Judge, Erode, as Appellate Authority under the Tamil Nadu Co-operative Societies Act, 1983, dated 28.04.2018, allowing the Appeal filed by the 1st Respondent as Appellant in C.M.A(C.S)No.81 of 2009 does not warrant any interference and this Civil Revision Petition is to be dismissed.

Point for consideration

Whether the judgment passed by the learned Appellate Tribunal Principal District Judge, Erode in C.M.A.C.S.No.81 of 2009 dated 28.04.2009 is to be set aside?



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17. Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent. Perused the typed set and the judgment of the learned Principal District Judge, Erode.

18. From the judgment of the learned Principal District Judge, Erode, it is found that on earlier occasion, the C.M.A(CS).No.81 of 2009 was allowed by the learned Principal District Judge, Erode by remanding the matter to the Surcharge Officer to consider a fresh surcharge proceedings as per the provision of Tamil Nadu Co-operative Societies Act. After such remand, again the Surcharge Officer has passed orders thereby reducing surcharge amount from Rs.28,48,551/- to Rs.12,84,463/-. Aggrieved by the same, the Appellant had approached the learned Principal District Judge, Erode by filing this C.M.A(C.S)No.81 of 2009. From the discussion of the judgment by the learned Principal District Judge, Erode, it is found that the statutory authorities under the surcharge proceedings had not conducted fair enquiry by recording statement of witnesses and marking documents and by granting opportunity to the delinquents to cross examine witnesses. Instead of following those



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procedures, the Surcharge Officer had mechanically passed orders, thereby reducing the earlier surcharge proceedings imposed against the Appellant before the learned Principal District Judge from Rs.28,48,551/- to Rs.12,84,463/-.

19. On perusal of the judgment of the learned Principal District Judge, Erode, it is found that without assigning any reason, the Surcharge Officer had reduced the surcharge amount. Still aggrieved by the same, the delinquent under surcharge proceedings had approached the Tribunal to set aside the finding of the Surcharge Officer.

20. On consideration of the argument of the learned Counsel for the Appellant in C.M.A(CS).No.81 of 2009, the learned Principal District Judge, Erode as Tribunal under the Co-operative Societies Act, had clearly found out that there were no materials placed before the Appellate Court regarding on what basis the first Respondent was considered and what caused the surcharge proceedings to be reduced from Rs.28,48,551/- to Rs.12,84,463/-. The learned Principal District Judge, Erode had found that the first respondent was not granted opportunity to cross examine



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witnesses. Further the learned Principal District Judge, Erode had found out that even though the surcharge proceeding was of the year 2008, no opportunity was given to the delinquent to cross examine the witnesses. The second ground of attack is that the show cause notice was issued belatedly. The first Respondent as Secretary of the society was issued with copy of the finding as per the judgment of the Statutory Appellate Court, the learned Principal District Judge, Erode to afford opportunity to the delinquent to cross examine witnesses. After remand, the authorities under the Co-operative Societies Act had not considered fresh enquiry independent as per Section 87 of the Tamil Nadu Co-operatives Act. Merely, the Surcharge Officer relied on the In-house enquiry report under Section 81 of the Act. Copies were furnished to the delinquent and the delinquent was not afforded opportunity to cross examine witnesses. Under those circumstances, the learned Principal District Judge, Erode had found that the proceedings of the Surcharge Officer were not in accordance with law as laid down in Co-operative societies Act. Therefore, she had set aside the finding given by the Surcharge Officer . Aggrieved by the judgment of the learned Principal District Judge, Erode, the first Respondent before the C.M.A.(C.S) No.81 of 2009 had preferred this



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Revision Petition.

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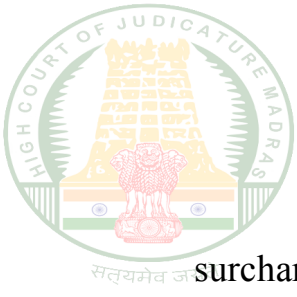
21. As per the rulings cited before the learned Principal District Judge, Erode by the learned Counsel for the Appellant, in the cases of;

(i) ***M.Karuppannan -vs- The Deputy Registrar (Dairying), Erode Taluk and District*** reported in ***2012 (1) CWC 794***;

(ii) ***S.Subramanian -vs- The Deputy Registrar of Co-operative Societies (Housing), Cuddalore & Others*** reported in ***2002 – 3 – L.W.185***;

(iii) ***P.N.Chockappan & Others -vs- The Special Tribunal for Co-operative Cases, High Court Campus, Madras and others*** reported in ***MLJ III 1999 587***;

22. The Surcharge Officer is expected to conduct independent enquiry, independent of the preliminary enquirer and afford opportunity to the delinquent to cross examine. Those procedure were not followed instead of specific direction by the Appellate Court/Appellant authority under the Co-operative societies Act. If the Surcharge Officer had conducted independent enquiry by affording opportunity to the first Respondent, the authorities concerned could not have reduced the



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surcharge amount from Rs.28,48,551/- to Rs.12,84,463/-. Therefore, the learned Principal District Judge, Erode had discussed the evidence and had stated without any reason, they had reduced the amount from Rs.28,48,551/- to Rs.12,84,463/- which is found to be unacceptable from the normal human conduct. Apart from that, the preliminary enquiry report was furnished to the first Respondent only on 21.08.2001 which was signed on 21.11.2008.

23. As per surcharge proceedings, the finding of the preliminary report shall be furnished within reasonable time and surcharge proceeding had to be initiated again without delay and within reasonable time of six months. Here, for the preliminary report dated 31.05.2004, enquiry was conducted in surcharge proceeding on 22.11.2007 and signed on 21.11.2008. It was not within the specified time of 6 months. Therefore, the same is vitiated. Also it has been clearly stated that Respondent-1 was working as Secretary of the Co-operative society. He is part of the employee of the society. The society had alleged to have granted loans to various parties but had not recovered. As a secretary he can only issue summons to the defaulters. Only if the secretary of the co-operative society

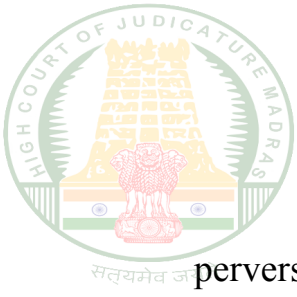


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had misappropriated funds wantonly causing loss, the surcharge proceedings are maintainable. Here, there is no such evidence before the Tribunal. On an earlier occasion, when the Civil Revision Petition came up for hearing, the learned Judge of this Court had sought how the enquiry was conducted whether independent enquiry conducted other than the preliminary enquiry. The learned Counsel for the Revision Petitioner/Society took time to furnish details. Subsequently they furnished details which are only bunch of documents which was alleged to have been served on the first respondent. At the stage of C.R.P only, the bunch of documents were furnished before the Court which cannot help the Revision Petitioner seeking before the Hon'ble High Court in reversing the finding given by the Co-operative Society Appellate Authority, the learned Principal District Judge, Erode.

24. When the surcharge proceeding is vitiated due to non observance of Co-operative Societies Tribunal rules, the Surcharge order is not at all maintainable. In the light of the ruling cited by the learned Counsel for the respondent before the learned Principal District Judge, Erode, the learned Principal District Judge, Erode had set aside the finding. There is no



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perversity in the finding given by the learned Principal District Judge, Erode. In short, the surcharge proceeding itself was not proper as per the Co-operative societies Act. Therefore the learned Principal District Judge had set aside the same. This revision does not have any merits.

25. In the light of the above discussion, the point for consideration is answered in favour of the Respondent-1 and against the Petitioner. The judgment passed by the learned Principal District Judge, Erode in C.M.A.(C.S).No.81 of 2009 dated 28.04.2009 is confirmed.

In the result, **this Civil Revision Petition is dismissed.** No costs.

29.04.2024

cda/shl

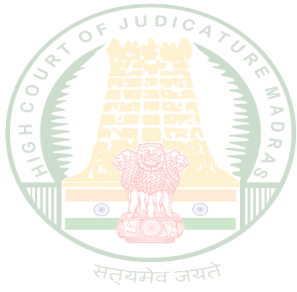
Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

- 1.The Co-operative Tribunal, Erode,
(Principal District Court, Erode).
- 2.The Deputy Registrar of Cooperative Societies,
Gobi Circle, Gobichettipalayam,
Erode District.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda/shl

**Pre-delivery Order made in
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29.04.2024