BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.818 of 2024
and
C.M.P.(MD) No.6072 of 2024

The Managing Director,
Co-operative Urban Bank,
Pattukottai & Taluk,
Thanjavur District. .. Appellant/4th Respondent

-Vs-

1.K.Sadaiyappan ..1st Respondent/Writ Petitioner

2.The Registrar of Co-operative Societies,
No.170, N.V.Natrajan Maligai,
Periyar EVR High Road,
Kilpauck, Chennai-612 001.

3.The Regional Joint Registrar of Co-operative Societies,
Thanjavur Region,
Thanjavur.

4.The Circle Deputy Registrar of Co-operative Societies,
Pattukottai,
Thanjavur District. .. Respondents 2 to 4/
Respondents 1 to 3

Prayer: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 27.09.2023 made in W.P.(MD) No.16786 of 2023.

For Appellant	:	Mr.S.Kumar
For R1	:	Mr.C.Jeganathan
For RR2 to 4	:	Mr.S.Kameswaran Government Advocate

JUDGMENT

[Judgment of the Court was delivered by ***R.Suresh Kumar, J.***]

This appeal has been directed against the order passed by the Writ Court dated 27.09.2023 made in W.P.(MD) No.16786 of 2023.

2. The 1st respondent was working as a Managing Director of the Co-operative Bank. During that period, there had been a proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 against the 1st respondent and ultimately, surcharge proceedings under Section 87 of the said Act had been issued.

3. However, such surcharge proceedings dated 30.05.2019 though was issued by the appellant/Department, that has not been concluded, as appeal has

been filed against such proceedings and the said appeal is still seems to be pending.

4. In the meanwhile, the 1st respondent is due to retire by 30.06.2022. Therefore, on that date, he was permitted to retire, however, subject to the surcharge proceedings, which has already been pending against him. Having aggrieved over such a conditional order of allowing him to retire, dated 30.06.2022, the 1st respondent had filed the said writ petition seeking to quash the said order and sought for a direction to pay the Death cum Retirement Gratuity, encashment of earned leave and other monetary benefits.

5. The said writ petition was heard and decided by the learned Judge through the impugned order dated 27.09.2023, where the learned Judge has found that the surcharge proceedings is neither a disciplinary proceedings nor a criminal action, but it is only a recovery proceedings for the alleged loss sustained by the appellant/Department under Section 87 of the Tamil Nadu Co-operative Societies Act and in that case, if at all any recovery is to be made by way of surcharge proceedings under Section 87(2) of the said Act, such recovery can be made by invoking the provisions of the Tamil Nadu Revenue Recovery Act, 1864 as arrear of land revenue.

6. Having taken note of this legal position, the learned Judge had come to the conclusion that as the surcharge proceedings is neither disciplinary proceedings, nor criminal proceedings, the action on the part of the appellant/Department to permit the 1st respondent to retire from service conditionally may not be justifiable and if at all, the surcharge amount is to be ultimately recovered from the 1st respondent and four others, as jointly all the five according to the Department were responsible for such loss and therefore, recovery is to be made from them, such recovery is to be made by invoking the provisions of the Tamil Nadu Revenue Recovery Act.

7. Therefore, under the said circumstances, it was the conclusion arrived at by the learned Judge in the impugned order that the conditional permission granted to the 1st respondent to retire from service with regard to the surcharge proceedings pending against him is concerned, such condition has to go. Therefore, by setting aside that portion of the order dated 30.06.2022, the learned Judge allowed the writ petition, which order is impugned herein.

8. Heard Mr.S.Kumar, learned counsel appearing for the appellant, Mr.C.Jeganathan, learned counsel for the 1st respondent and Mr.S.Kameswaran, learned Government Advocate appearing for respondents 2 to 4.

9. Insofar as the retiral benefits payable to the 1st respondent is concerned, it is only EPF and earned leave encashment benefit. Apart from these two heads, according to the learned counsel for the appellant, under no other head, any amount is due and payable by the appellant/Department to the 1st respondent.

10. Be that as it may, insofar as these two accounts are concerned, if at all the money due is payable as a retirement service benefits to the 1st respondent, the same cannot be withheld for the purpose of set-off the recovery pursuant to the surcharge proceedings.

11. Even though it was argued by the learned counsel appearing for the appellant that the encashment of earned leave benefit can be retained and from which the amount recoverable from the 1st respondent by way of surcharge proceedings can be recovered later on, after the appeal proceedings filed by the 1st respondent comes to an end in favour of the appellant/Department, we are not impressed with the same.

12. The reason being that, as against the surcharge proceedings or the award passed in this regard, statutory appeal has been filed before the first appellate

forum, which is pending. Therefore, what would be the conclusion going to be arrived at by the first appellate forum is not known as of now. Therefore, subject to such a decision to be made at this juncture, the appellant/Department cannot withhold the amount of encashment of earned leave for the purpose of recovery under Section 87 surcharge proceedings.

13. Moreover, if at all any such recovery is to be made, ultimately by the appellant/Department from the 1st respondent, the same can be undertaken by invoking the provisions of the Tamil Nadu Revenue Recovery Act, i.e., in fact, contemplated under Section 87(2) of the Tamil Nadu Co-operative Societies Act.

14. Therefore, when such an avenue is always open to the appellant, to invoke the present move of the appellant/Department to give such a condition to retain the said amount as a conditional permission to retire from service is beyond the scope of the very surcharge proceedings itself especially under Section 87(2) of the Tamil Nadu Co-operative Societies Act.

15. Therefore, to that extent, the conclusion arrived at by the learned Judge, in our considered view, is to be sustained. Resultantly, this appeal fails. Hence, it

is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] **[G.A.M., J.]**
04.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

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R.SURESH KUMAR, J.
and
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