



C.R.P(MD)No.432 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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A.1216, Dindigul Agricultural Producers
Marketing Society Ltd.,
Managing Director,
No.1, Chellandi Amman Koil 1st Street,
Palani Road,
Dindigul-624 001.

... Petitioner/2nd Respondent/3rd Party

vs.

1.The Surcharge Proceedings Officer,
(Circle Deputy Registrar of Co-operative Societies)
No.11, State Bank Colony,
Nehruji Nagar,
Dindigul-624 001.

... 1st Respondent/1st Respondent/Competent Authority

2.C.Irudhayaraj

... 2nd Respondent/Appellant/Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the impugned Judgment and decree made in CMA (CS)No.17 of 2018 on the file of the Co-operative Appellate Tribunal/Principal District Court, Dindigul and set aside the same and confirm the surcharge order in Tha.Va.No.3/2017 dated 06.12.2017 on the file of the first respondent.



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For Petitioner : Mr.P.R.Prithiviraj

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate for R1

ORDER

The Civil Revision Petition is filed challenging the order dated 09.02.2021 made in CMA(CS)No.17 of 2018 on the file of the Co-operative Appellate Tribunal/Principal District Court, Dindigul.

2.By a surcharge order dated 06.12.2017, a sum of Rs.1,61,812.37/- was ordered to be recovered from the second respondent herein. Aggrieved by the same, the appeal was preferred on the file of the Appellate Tribunal. By the judgment dated 09.02.2021, the Tribunal allowed the appeal. The Appellate Court, after considering the fact that the medicines got expired on account of which, the stock deficit was found and considering the fact that one P.Siva was the pharmacist working until 06.05.2014 and after his exit, no other pharmacist was employed for a period of six months and also considered the judgments of this Court in ***M.Sambantham Vs. The Deputy Registrar (Credit Co-operative Society)*** reported in ***1999 (3) MLJ 310*** and ***K.Ajay Kumar Gosh Vs. The Tribunal***



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for Co-operative reported in **2009 (4) MLJ 992** and held that unless willful negligence is pleaded and proved, mere negligence cannot give rise to surcharge proceedings, allowed the petition. As against which, the present civil revision petition is filed.

3.*Mr.P.R.Prithiviraj*, learned counsel appearing on behalf of the petitioner submitted that the Tribunal erred in allowing the appeal. He would submit that after once the pharmacist was not there, it was then the duty of the Manager to see to that the stocks did not expire and therefore, he is liable for the loss.

4.It can be seen that the Society chose to purchase drugs and to run the retail outlet and it is the duty of the Society to appoint pharmacists without any break and if no pharmacist is appointed for a period of six months, it cannot be said to be the sole mistake of the Manager alone and it is the mistake of the management as such in not appointing a pharmacist. In matters of drugs, especially when it comes to the date of expiry etc., the Manager being a lay person, can at best can be held to be negligent and not willfully negligent. Therefore, with reference to the present charge, I am in



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agreement with the Appellate Tribunal and as such, finding no merits, the

Civil Revision Petition is dismissed. No costs.

31.07.2024

NCC : Yes / No
sji

To

- 1.The Co-operative Appellate Tribunal/Principal District Court,
Dindigul.
- 2.The Surcharge Proceedings Officer,
(Circle Deputy Registrar of Co-operative Societies)
No.11, State Bank Colony,
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D.BHARATHA CHAKRAVARTHY, J.

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