



C.R.P. (MD).No.2274 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.2274 of 2019
and
C.M.P(MD) No.11742 of 2019

The official Liquidator
cum Assistant Director
(Industrial Cooperatives),
Taico Bank,
No.36, South Canal Bank Road,
Mandaivelipakkam,
R.A.Puram,
Chennai – 600 028.

... Petitioner/3rd Party

(Cause title accepted vide Court
order dated 21.11.2019 made in
C.M.P(MD) No.10791 of 2019 in
C.R.P(MD) SR.No.4044 of 2019)

-vs-

1. K.Kamaraj

... 1st Respondent/Appellant

2. The Special Officer,
748, M/s. Venkatachalpuram,
Small Scale Match Producers,
Service Industrial Co-operative Society,
Sattur.

3. The Industrial Co-operative Officer,
cum Recovery Officer,
District Industries Center,
Virudhunagar District.

... Respondents 2 & 3/Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order dated 09.03.2018 passed in C.M.A.(C.S) No.5 of 2008, on the file of the Principal District and Sessions Court/Co-operative Appellate Tribunal, Virudhunagar District, Srivilliputhur.

For Petitioner : Mr.S.Rajasekar
For R1 : Mr.L.George Paul Anto
For R2 and R3 : Mr.C.Satheesh
Government Advocate

ORDER

The present Civil Revision Petition has been filed by the Official Liquidator, challenging the order passed in C.M.A.(C.S) No.5 of 2008 on the file of the Principal District and Sessions Court/Co-operative Appellate Tribunal, Virudhunagar District, Srivilliputhur, wherein, the appeal filed by the Secretary of Co-operative Society, challenging the order passed under Section 87 of the Co-operative Societies Act, was allowed.

(A) Factual Matrix:

2. The first respondent herein was functioning as a Secretary of the second respondent/Co-operative Society for the period between 03.10.2001



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and 05.03.2004. Based on the allegations of financial irregularity, proceedings under Section 81 of the Tamil Nadu Cooperative Societies Act was initiated and a report came to be filed on 20.01.2005. Based upon the said report, proceedings were initiated as against the first respondent herein along with others under Section 87 of the said Act.

3. A report under Section 87 of the Tamil Nadu Co-operative Societies Act was submitted on 31.05.2006. In the said report, the first respondent herein was held liable for item Nos. 7 to 10 and 14. Challenging the same, the first respondent had filed C.M.A.(C.S) No.5 of 2008 before the Principal District and Sessions Court/Co-operative Appellate Tribunal, Virudhunagar District, Srivilliputhur. The appellate authority had allowed the appeal on the ground that the Society has not established the fact that the Secretary had wilfully neglected in recovering the amounts that are due to the Society. Unless there is in wilful negligence, default on the part of the employee of the Society, the proceedings under Section 87 of the above said Act cannot be initiated. In the meantime, the Society got liquidated and Official Liquidator was placed in charge of the Society. Challenging the said order of the Co-operative Tribunal, the Official Liquidator has filed the above appeal.



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4. Pending appeal, it is brought to the notice of this Court that all other items except item Nos.7, 8 and 10 have been either recovered or decree has been passed in favour of the Society. As far as item No.14 is concerned, the Society has filed in O.S.No.73 of 2005, before the Munsif Court, Sattur, and the suit has been decreed on 12.09.2005. Therefore, the first respondent herein is exonerated from all other items except item Nos.7, 8 and 10.

(B) Contention of the counsel:

5. According to the learned counsel appearing for the revision petitioner, as far as item No.7 is concerned, the first respondent is liable to pay a sum of Rs.2,184.75/- (Rupees Two Thousand One Hundred and Eighty Four and Seventy Five Paise only) . He further contended that as far as item No.10 is concerned, he is liable to pay a sum of Rs.31,586/-(Rupees Thirty One Thousand Five Hundred and Eighty Six only). He further contended that as far as item No.8 is concerned, a sum of Rs.1,50,088/- (Rupees One Lakh Fifty Thousand and Eighty Eight only) is liable to be recovered from the first respondent herein. The first respondent had not initiated proceedings in time,



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for recovery of the amount and therefore, proceedings were initiated before the Sub-Court, Sivakasi in O.S.No.10 of 2007 for recovery of the said amount. However, the suit has been dismissed for default on 20.07.2007. Therefore, the first respondent, namely, the Secretary of the Co-operative Society is liable to pay the said amount as contemplated under Surcharge Proceedings. Hence, he prayed for allowing the present Civil Revision Petition as far as item Nos.7, 8 and 10 are concerned.

6. Per contra, the learned counsel appearing for the first respondent herein had contended that as far as item No. 8 is concerned, a suit has been filed by the subsequent Secretary of the Co-operative Society in the year 2007 and the same has been dismissed for default on the ground of non-payment of batta on 20.07.2007. Therefore, the subsequent office bearers of the Society are responsible for the dismissal of the suit on the ground of non-prosecution and he is not liable to pay the said amount.

(C) Analysis:

7. A perusal of the records clearly indicates that the first respondent herein as Secretary of the Society was functioning for the period between



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03.10.2001 and 05.03.2004. Due to non-recovery of the pending dues, under Section 81 of Cooperative Societies Act, proceedings were initiated and report was submitted on 20.12.2005. Thereafter, under Section 87 of Tamil Nadu Co-operative Societies Act, proceedings were initiated and terminated on 31.05.2006 mulcting liability upon the first respondent herein. Only thereafter, the suit in O.S.No.10 of 2007 has been filed on 19.01.2007 for recovery of a sum of Rs.1,50,088/- (Rupees One Lakh Fifty Thousand and Eighty Eight only) arising out of item No.8 in the surcharge proceedings. Therefore, it is clear that during his tenure the first respondent, he has not initiated any steps for recovery of amount. Hence, the surcharge proceedings mulcting liability upon the first respondent for the said item Nos.7, 8 and 10 cannot be held to be unsustainable.

(D) Conclusion:

8. In view of the above said deliberations, the award under the surcharge proceedings dated 31.05.2006 is confirmed as against the first respondent with regard to item Nos.7, 8 and 10 alone. As far as other items are concerned, the first respondent is exonerated.



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9. With the above said observation, this Civil Revision Petition stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes/No

Index : Yes / No

Internet : Yes / No

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To

1. The Principal District and Sessions Court/
Co-operative Appellate Tribunal,
Virudhunagar District, Srivilliputhur.

2. The Munsif Court,
Sattur,

3. The Sub-Court,
Sivakasi.

4. The Special Officer,
748, M/s. Venkatachalpuram,
Small Scale Match Producers,



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R.VIJAYAKUMAR,J.

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