



C.R.P.(MD).No.1996 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.R.P.(MD).No.1996 of 2022

O.1896 Kadayanallur

Ayyapuram Primary Agricultural Co-operative Credit Society,
represented through its Vice President,
No.18CE/85, Santhaipet Street,
Kadayanallur Post,
Tirunelveli District.

... Petitioner

Vs

1. Mohideen Pitchai

2. The Deputy Registrar of Co-Operative Societies,
Deputy Registrar of Co-Operative Societies Office,
Near Old Bus Stand,
Tenkasi District.

3. Chellappa

4. V. Gandhi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in CMA(CS).No. 49 of 2017 dated 12-04-2022 on the file of the Principal District Court, Tirunelveli.



C.R.P.(MD).No.1996 of 2022

For Petitioner : Mr.S.Kumar,
For R1 & R3 : No Appearance
For R2 : Mr.A.Baskaran
Additional Government Pleader
For R4 : Mr.V.O.S.Kalaiselvam

ORDER

The petitioner Society has filed this Civil Revision Petition as against the order passed by the Principal District Court, Tirunelveli in C.M.A(CS)No. 49 of 2017, dated 12.04.2022.

2.The first respondent has filed the said civil miscellaneous appeal as against the surcharge order passed against him fixing the liability for the loss caused to the Society. The loss was caused to the Society by auctioning the jewels, which were pledged in the Society. The Society has initiated proceedings against the Secretary and Clerk of the Society that they have conducted the auction for lesser amount as against the circular issued by the Registrar of Co-Operative Societies in R.C.No.8339/2015/CBP1, dated 23.02.2015, in which certain instructions have been provided regarding the sales of jewels in auction in the Co-Operative Societies and the same is



extracted as under:

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"Cooperative Societies/Banks issuing loan on pledge of jewels. Auction should be taken to recover the Jewel Loan in time from the borrowers. When Jewel Loan become overdue, timely action should be taken to auction the Jewels. While conducting auction sale Cooperative Societies/Banks follow different procedures. In order to streamline the methods and procedures for conducting auction sale of Jewels, the following instructions are issued.

1. Approval for conducting auction should be obtained from the Board and the minimum price per gram of jewels to be auctioned shall be decided by a committee consisting of the President, atleast 2 Directors, Managing Director, General Manager and Assistant General Manger (Credit).

2. Copy of Advertisement issued for auction sale of Jewels should be sent with covering letter to this office as and when Jewel Loan

Auction advertisement Issued by Central Cooperative Banks

3. Participants in auctions of jewels shall produce PAN Card.

4. Know Your Customer (KYC) norms details should be obtained from participants.

5. A sum of minimum of Rs.10,000/- subject to maximum of Rs.25,000/- should be collected as Earnest Money Deposit (EMD) from participants of auction sale of jewel. After auction is over, the Earnest Money Deposit (EMD) amount has



C.R.P.(MD).No.1996 of 2022

to be adjusted (or) refunded to the participants as the case may be."

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3.The Tribunal has discharged the first respondent from the proceedings under Section 87 of the Tamilnadu Co-Operative Societies Act that the first respondent as the President was not aware of the auction and he was not present in the auction. As against the same the Society has filed the revision petition before this Court.

4.The learned Counsel for the petitioner by producing the statement provided by the first respondent before the Deputy Registrar of Co-Operative Societies in the enquiry conducted by him under Section 87 of the Co-Operatives Societies Act, wherein, the first respondent has admitted that he was present at the time of auction in the Society and he was aware of the auction conducted in the Society however he has questioned about the auction conducted without informing the officials, for which, he was informed by the Secretary that the information can be provided to the authorities after conducting auction and therefore, he did not take any steps to prevent the auction.



C.R.P.(MD).No.1996 of 2022

5. Based on this statement, the learned Counsel for the petitioner submits that the first respondent was very much available in the auction and he was aware of the auction. However, he has failed to prevent the auction when it was conducted as against the circular issued by the Registrar of the Co-Operative Societies.

6. The learned Counsel for the first respondent submits by referring the Paragraph No.19 in the orders of the Tribunal that the tribunal has considered the case of the first respondent differently that the President has not signed in any of the proceedings and therefore, he has been exonerated from the proceedings. The observations of the tribunal in para 19 is also extracted as under:

"19. As discussed above, the Secretary and the Clerk of the societies not only getting written resolution for getting approval of auction from the executive committee and also the President and informed the superior about the auction and conducted action without the presence of the representative from the Head Office and caused loss to the society. In these circumstances, the Secretary and the Clerk are liable to pay the loss to the society and the appeal filed in the appellant secretary and the 4th respondent clerk in CMA Cs Nes. 38/17 and 39/17 are liable to be dismissed. Since the allegation against the President is not proved and he has not signed in any record of the society, the appeal filed by the President



C.R.P.(MD).No.1996 of 2022

in CMA Cs No.49/2017 is liable to be allowed. The Point is answered accordingly. "

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7.This Court has considered the rival submissions made.

8.In order to streamline the methods and procedures for conducting auction of jewels in the Co-operative Societies, the Registrar of Co-Operative Societies has issued a circular on 23.02.2015. As per the circular, before conducting the auction of the jewels an approval for conducting the auction should be obtained from the Board and the minimum gram of jewels should be auctioned shall be decided by the committee consisting of President, at least two Directors, Managing Director, General Manager and Assistant General Manager (Credit) and a copy of the advertisement for this auction of jewels should also be communicated to the Central Co-Operative Bank with a covering letter and with the advertisement.

9.In this case, admittedly, there was no prior permission obtained from the Board, no advertisements were made, the prices have not been fixed and the auction was conducted in haphazard manner for lesser prices and thereby a loss was caused to the Society to the tune of Rs.7,00,000/-. The President of the Board is expected to take the decisions in the case of auction of



C.R.P.(MD).No.1996 of 2022

jewels he has to take the decision for fixing the minimum prices per gram. In this case, if he has not acted upon it, which has to be treated only as deliberate mistake. Initially, the learned Counsel for the first respondent taken a stand that the first respondent was not present, not signed in the auction proceedings and he was not aware of the auction. However, the statement given by him before the Deputy Registrar in the enquiry conducted under Section 87 reveals that the first respondent was very much available in the Society at the time of auction and he has also enquired about the intimation, which is required to be given to the Central Co-Operative Bank, for which, an evasive reply was made by the Secretary. In the event if the secretary has given an evasive reply, it is the responsibility of the President to stop the proceedings when the auction has been conducted by the Secretary as against the circular issued by the Registrar of the Co-Operative Societies. The President being the head of the Board cannot now plead that he is not aware of the procedure. When he has assumed the office as a President, he must be aware of the procedures of the Society and he must act in accordance with the procedures, which has been contemplated and therefore, he cannot be given any exemption that he is not aware of the procedures.



C.R.P.(MD).No.1996 of 2022

10. Therefore, the impugned order passed by the tribunal is set aside.

Accordingly, this civil revision petition is allowed. No costs.

03.09.2024

NCC : Yes/No

Index : Yes / No

Internet: yes / No

LR

To

1. The Principal District Court,
Tirunelveli.

2. The Deputy Registrar of Co-Operative Societies,
Deputy Registrar of Co-Operative Societies Office,
Near Old Bus Stand,
Tenkasi District.

3. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD).No.1996 of 2022

B.PUGALENDHI, J.

LR

C.R.P.(MD).No.1996 of 2022

03.09.2024