



C.R.P.(MD)No.2962 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2962 of 2023

and

MP (MD) No.1 of 2015

M.Manoharan : Petitioner/Plaintiff
Vs.

1.The Regional Deputy Registrar of
Cooperative (Housing) Society,
Tiruchirapalli.

2.The Presiding Officer,
Cooperative Tribunal-cum-
Principal District Judge,
Principal District Court,
Pudukkottai District. : Respondents/Respondents

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the CMA(CS)No.1 of 2010, dated 05/06/2014 on the file of the Cooperative Tribunal (Principal District Court), Pudukkottai and pass such other orders.

For Petitioner : Mr.S.Ramasundar Vijayaraj

For Respondents : Mr.A.Sivanu Pandian
Government Advocate
(Civil)

O R D E R

This civil revision petition has been filed seeking to set aside the CMA(CS)No.1 of 2010, dated 05/06/2014 on the file of the Cooperative Tribunal (Principal District Court), Pudukkottai.



2. The facts in brief:-

The petitioner was originally appointed as Junior Inspector of Cooperative Societies, on 04/08/1986. After working in various positions and various places, he was appointed as Cooperative Sub Registrar under the control of Regional Deputy Registrar of Cooperative (Housing) Society, Trichy. During the year 1997 to 2001, housing loans were sanctioned by the housing society to the beneficiaries without verifying construction. The allegation against him is that he failed to recover the loan amount from the beneficiaries. On 05/04/2005, Enquiry Officer was appointed under section 81 of the Tamil Nadu Cooperative Societies Act. A report was submitted. A recommendation was made to initiate surcharge proceedings against him and others under section 87 of the Tamil Nadu Cooperative Societies Act. In pursuance of the above said, the first respondent initiated surcharge proceedings. He filed detailed explanation. But however, the order of recovery was passed to the tune of Rs.29,37,326/-. Now the entire loan has been recovered from loanees by way of recovery proceedings initiated by the society. The loss now has been set right. Against that surcharge proceedings, CMA(CS)No.1 of 2010 was filed before the second respondent. That came to be dismissed.



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3. Against which, originally writ petition was filed.

As per the order of this court, it is converted as CRP.

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4. Heard both sides.

5. It is admitted by the respondents themselves that the petitioner was working as Senior Inspector, Cooperative Societies under the first respondent. The issue arose with regard to the loan sanctioned to the loanees pertaining to the year 1997-2021.

6. The allegation is that without proper inspection of stage of the construction, loans were disbursed. Later, the loanees defaulted. No proper steps were taken by the employees including the petitioner to recover the loan amount. Hence, surcharge proceedings and subsequent appeal, etc.

7. The learned counsel appearing for the petitioner would straightaway draw the attention of this court to the order passed by this court in **CRP (PD) (MD) No. 2593 of 2014, dated 06/10/2021 (K.S.Chandran Vs. The Regional Deputy Registrar, Cooperative Societies (Housing) A4, Block, Sengulam Colony, Mannarpuram, Trichirappalli.20)**. That revision petition was preferred by one K.S.Chandran,



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who was the co-respondent in the surcharge proceedings initiated by the first respondent in this matter. In that case, K.S.Chandran was working as President of the Society. It was contended by K.S.Chandran that he was working in a supervisory capacity and counter signatory for the loan obtained by the members of the society. After hearing both sides, the Coordinate Bench of this Court has made the following observation:-

"8.It is relevant to note that to initiate surcharge proceedings against an employee of the Society, it is relevant to note that he should have indulged in any actionable wrong either by commission or omission in deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances.

*9.It would be apt to refer here that in a similar situation in **A.Janakiraman and another v. Deputy Registrar of Cooperative Societies and another ((2009) 6 MLJ 1051)**, a learned Single Judge of this court, had referred to various earlier decisions on the point and held as under:-*



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"In surcharge proceedings, the first respondent is duty bound to prove that there was willful dereliction of duty like criminal case. The criminal Court having found that the petitioners are not guilty, the said findings are definitely in favour of the petitioners. The words used under Section 87(1) are "willful negligence".

The said issue was considered in series of decisions of this Court.

(a) In **Sathyamangalam Co-Operative Urban Bank Limited v. Deputy Registrar of Cooperative Society and Another (1980) 2 MLJ 17**, this Court considered the scope of earlier Section viz., Section 71 of the Tamil Nadu Cooperative Societies Act, 1961, which is analogous to Section 87 of the Act, 1983 and held that **mere negligence is not sufficient to intimate surcharge proceedings.** (emphasis supplied) "

10. Further, a Division Bench of this court in **K. Ajay Kumar Gosh v. Tribunal for Cooperative Cases, Nagercoil ((2009) 4 MLJ 992)**, it has been held thus,



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" ...to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the appellants with the loss caused to the society."

11. In **D. Ganesan vs. The Commissioner of Sugar, Chennai & others (CDJ 2019 MHC 4275)**, this court, in similar circumstances, has held as under:-

"No doubt, the petitioners have acted without care and performed their duties in a casual and negligent manner. However, such negligence alone is not



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sufficient to hold them liable under [Section 87](#) of the said Act, unless the same is coupled with wilful or deliberate intention to commit such negligence. As there is no finding given by the authorities below to that effect, then the principle that has been laid in the series of decisions, referred to supra, of this Hon'ble Court has to be applied to this case to hold that the proceedings under [Section 87](#) of the said Act cannot be initiated against the petitioners in the absence of any wilful negligence on their part.

.....

When the staffs were given special assignment to do certain acts, the higher officials have to verify the work done by the staffs. However, when the subordinates prepared a note or prepared a bill and submitted before the higher officers, except to put initial, under the impression that the bills are genuine, the higher officer has no other role. Merely because the revision petitioner was the employer of the institute, he cannot fastened with liability."



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8. Reading of the above said observation of the Coordinate Bench of this Court fixes the issue. The petitioner is also standing on the same footing like the case of K.S.Chandran. Nothing more is required to be discussed in this matter. It is admitted that the petitioner is working in the supervisory cadre, not directly involved in the day today affairs of the society.

9. Reading of the above said order passed by the first respondent also indicates that the petitioner is also one of the counter signatories to the loan documents. As stated above, this petitioner is also standing on the very same footing like that of the K.S.Chandran. It is further stated that no appeal was preferred by the Department against the order passed in CRP 2593/14.

10. Apart from that, it is also brought to the notice of this court that the money involved in the proceedings have been now recovered in full. In respect of others, it has been duly settled. So, this is also taken into account.



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11.For all the reasons stated above, this civil revision petition is **allowed**. The order, dated 05/06/2014 passed in CMA(CS)No.1 of 2010 by the Cooperative Tribunal (Principal District Court), Pudukkottai, is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

19/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Regional Deputy Registrar of Cooperative (Housing) Society, Tiruchirapalli.
- 2.The Presiding Officer, Cooperative Tribunal-cum-Principal District Judge, Principal District Court, Pudukkottai District.
- 3.The Section Officer, ER/VR Section, Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN, J

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