



CRP(MD)No.2765 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.2765 of 2023 and
CMP(MD) No.14404 of 2023

G.Palraj

... Petitioner

Vs

1.The Deputy Registrar of Co-operative Societies,
Near Madavar Valagam Arch,
Srivilliputhur,
Virudhunagar District.

2.D.Vetrivel,
The Secretary,
SP.SPL.24, Kanjampatty Primary Agricultural
Co-operative Credit Society Ltd.,
@ Pulvaipatti,
Sattur Taluk,
Virudhunagar District.

3.M.Balamurugan

... Respondents



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Prayer: Petition filed under Article 227 of the Constitution of India, to to allow this civil revision petition by setting aside the order passed in CMA (CS) No.5 of 2021, dated 02.02.2023, by the Co-operative Appellate Tribunal/Principal District Court, Virudhunagar and the order passed by the first respondent in surcharge proceedings in Tha.Thee. Va.:3/2019-20 (Na.Ka.4805/2019/Sa.Pa), dated 13.03.2020.

For Petitioner : Mr.M.Ganesan
For R1 : Mr.A.Baskaran
Additional Government Pleader

ORDER

The petitioner/ the erstwhile President of Kanjampatty Primary Agricultural Co-operative Credit Society Ltd, Virudhunagar has filed this Civil Revision Petition, challenging the order passed by the Co-operative Appellate Tribunal/ Principal District Court, Virudhunagar in CMA (CS) No.5 of 2021, dated 02.02.2023.

2.The said appeal was filed by the petitioner as against the surcharge proceedings initiated as against him by the Deputy Registrar



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of Co-operative Societies/the first respondent, for the loss caused to the Society to the tune of Rs.4,43,038/-. The surcharge proceedings was initiated not only as against the the petitioner/the then President, but also as against the Secretary and the Clerk in charge of the Society that in the year 2016 they have failed to auction the jewels in 25 over due jewel loan accounts. Challenging the surcharge proceedings, the petitioner/ the then President, the Secretary and the Clerk have filed appeals before the Tribunal in CMA(CS) Nos. 5,3 and 2 of 2001 respectively. The Tribunal has allowed the appeal filed by the Clerk in CMA(CS) No.2 of 2001 that he is not liable to be prosecuted. Similarly, the appeal filed by the Secretary in CMA(CS) No.3 of 2001 was also allowed. However, the petitioner alone has been fixed with the liability and the appeal filed by the President in CMA(CS) No. 5 of 2001 was dismissed by order dated 02.02.2023. Challenging the same, this revision petition has been filed by the then President.



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3.The learned counsel appearing for the petitioner submits

that the petitioner is an elected President and he was not aware of the procedures in the Society at that relevant point of time. In all fairness, the Secretary and the Clerk ought to have informed about the procedures to be followed in the Society, and in the absence of any such materials that he was made aware of the procedures of the Society, he cannot be held responsible for the loss caused to the Society. According to him, the entire show in the Society is run by the Secretary of the Society along with the Clerk and therefore, the liability cannot be fixed on the petitioner alone, who is an elected President. He further submits that the charges levelled as against this petitioner and the other delinquents are that they have postponed the auction on 29 over due jewel loan accounts and thereby caused loss to the Society. This postponement was also made on the request made by the members that they would pay the loan amount and a joint decision was taken by the Board to provide an opportunity to the borrowers to repay the loan



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amount and therefore that cannot be treated as a loss caused to the Society. The learned Counsel also submits that as per Section 87 of the Tamil Nadu Co-operative Societies Act, surcharge proceedings can be initiated on a member of the board or an employee of a Co-operative Society, if he has misappropriated or fraudulently retained money or has been guilty of breach of trust. In this case, the ingredients under Section 87 of the Act would not fall and therefore, it is not proper on the part of the respondents to initiate surcharge proceedings as against the then President, the elected person, under Section 87 of the Tamil Nadu Co-operative Societies Act. According to the learned counsel, it is not a loss, and it is a rise in interest, which can be recovered from the loaners.

4.The learned Additional Government Pleader appearing for the respondent submits that in the year 2014, there were 15 over due jewel loans with the Society and therefore, a proposal was made



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for auctioning those jewels and accordingly the date of auction was also fixed on 20.08.2014. In view of the resolution passed by the Board, the date of auction was postponed. The Secretary of the Society has also put an office note to the President of the Society on 30.06.2016 and 29.02.2016 stating that auction had to be conducted for the jewels, which were over due. However, the president has not permitted for the same. The auction, which was fixed in the year 2015, was also postponed. Finally, the auction was conducted on 22.07.2016. At the time of auctioning the jewels, the total dues on 25 over due jewel loans comes around Rs.32,13,893/-. But the auction has realized only a sum of Rs.27,70,855/- and therefore, according to the learned Additional Government Pleader, a loss of Rs. 4,43,038 was caused to the Society. It is purely on the conduct of the petitioner/the then President, due to postponement of the auction. The learned Additional Government Pleader has also relied on the provision under Section 87 of the Cooperative Societies Act and submits that the persons, who are



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in the management can be prosecuted or liable for the surcharge proceedings under Section 87 of the Act.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The petitioner is the then President of Kanjampatty Primary Agricultural Co-operative Credit Society Ltd.,Virudhunagar. A proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act was initiated as against this petitioner, Secretary and the Clerk of the Society. Challenging the same, all the three have filed appeals before the Co-operative Tribunal in CMA(CS) Nos. 2,3 and 5 of 2021. The appeals filed by the Clerk and the Secretary in CMA(CS) Nos.2 & 3 were allowed by the Tribunal, whereas, the appeal filed by the petitioner alone was dismissed that there is a negligence on the part of the petitioner/the then President. The reasonings of the Tribunal is



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that the Secretary has duly intimated about the necessity for bringing the jewels for auction for the over due jewel loans in the year 2014 itself. But the auction was conducted only in the year 2016. The auction was also fixed initially on 12.08.2014. However, the same was postponed by the resolution of the Board on 28.08.2014. The Secretary has also once again made a request for conducting the auction in the month of March 2015, however a resolution was once again passed on 20.05.2015, based on which, the auction was fixed on 13.06.2015. Again, the members have asked for time and therefore, the Board resolved to postpone the auction. The Secretary has put an office note on 30.06.2015 and on 29.02.2016 and he has insisted the necessity for bringing the jewels for auction. However, the jewels were not auctioned, though it was over due in the years 2014 and 2016, thereby a loss was caused to the Society to the tune of Rs.4,43,038/-. The main allegation as against this petitioner is that the petitioner, in the capacity of the President of the Society, by using his powers has passed the



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resolution as against the suggestions made by the Secretary. Therefore, he must be held responsible for the loss caused to the Society.

7.In view of the above, this Court finds no infirmity/error in the order passed by the Co-operative Appellate Tribunal/ Principal District Court, Virudhunagar in CMA (CS) No.5 of 2021, dated 02.02.2023. Accordingly, this Civil Revision petition is dismissed. No costs. Consequently, connected Miscellaenous petition is closed.

12.08.2024

Index : Yes / No.
Internet : Yes / No.
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The Deputy Registrar of Co-operative Societies,
Near Madavar Valagam Arch,
Srivilliputhur,
Virudhunagar District.



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B.PUGALENDHI, J.

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