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C.R.P.(PD).No. 1198 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA.J

C.R.P.(PD).No. 1198 of 2025

&

C.M.P.No. 7229 of 2025

C. Gunasekaran

... Petitioner

VS.

1.The Deputy Registrar
of Co-operatives Societies Credit,
Chennai Region,
Kuralagam Building
Chennai 108.

2.The Life Insurance Corporation Employees
Co -Operative Bank Ltd,
Rep by its Administrator,
No.8, United India Building,
Esplanade Road,
Chennai 600 018.

... Respondents



C.R.P.(PD).No. 1198 of 2025

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the Special Tribunal for Co-operative Cases / Chief Small Causes Court, Chennai in CMP No.1 of 2025 in CMA(Cs) No.4 of 2025 dated 18.02.2025.

For Petitioner : Mr. M.S.Palaniswamy

For Respondents : Mr. D.Gopal
Government Advocate.

ORDER

The above Civil Revision Petition has been filed challenging the order passed by the Special Tribunal for Cooperative Cases / Chief Small Causes Court, Chennai in CMP.No.1 of 2025 in CMA(Cs) No.4 of 2025, in and by which the learned Judge had dismissed the petition filed by the petitioner herein for an interim stay of the proceedings in Na.Ka.3623/2023/Sa.pa1 (1) dated 30.04.2024. The brief facts are as follows.



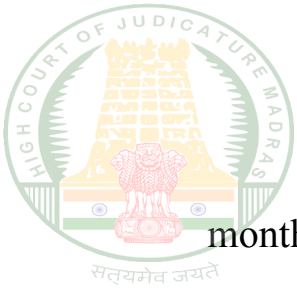
2.The petitioner was appointed as an Assistant in the 2nd respondent Bank on 07.04.1995. Been satisfied with the work done by the petitioner, he was promoted to the post of Assistant Manager on 01.12.2014 and the became Manager on 08.02.2019, in which post he continued till date. While so, the 1st respondent who is the statutory authority under the Tamil Nadu Cooperative Societies Act, herein after called the Act, had ordered enquiry under Section 81 of the Act into the affairs of the 2nd respondent Bank by order dated 01.03.2023.

3. Thereafter, enquiry was conducted and report was submitted by the Enquiry Officer on 07.08.2023, in which report the Enquiry Officer had stated that since recovery of loans were not initiated within the period of limitation, the Bank had suffered loss to the tune of Rs.1,62,43,560/-. The Enquiry Officer therefore recommended recovery of the loans under Section 87 (1) of the Act against the members of the Board and the employees together with interest at 9.5% and 15%.



WEB COPY 4. Pursuant to this report, the 1st respondent had issued surcharge notice under section 87 (1) of the Act against the petitioner and 30 others. The petitioner had given a detailed explanation to disprove the charges against him. However, without considering the same and also flouting procedures contemplated under Section 87 (4) of the Act, the 1st respondent had hastily passed an ante dated surcharge order dated 30.04.2024. However, the said order was served on the petitioner only on 22.11.2024. Therefore, the petitioner would submit that the surcharge order was barred by limitation. The 1st respondent had not addressed the issue as to whether there was any negligence or deliberate misconduct on the part of the petitioner.

5. The petitioner would submit that passing of the surcharge order against him was malafide since he was in the verge of retirement and fixed the liability against him. The malafide is further writ large in as much as the surcharge order has been served on the petitioner 7



months after the date of order. Therefore, the petitioner had filed the appeal before the Tribunal. The petitioner had also sought stay of the surcharge order pending the appeal.

6. The 2nd respondent Bank had filed a counter inter alia contending that the enquiry was initiated since there were several overdue loan which had become time barred and this was only on account of the willful negligence on the part of the Board of Directors and Staff members of the 2nd respondent Bank.

7. The 2nd respondent would further submit that the Enquiry Officer on considering the materials had come to the conclusion that there was a willful negligence on the part of the Board of Directors and employees. The Enquiry Officer has observed that 38 surety loans to the tune of Rs.1,04,10,416/- continued to remain over due and no statutory action for recovery had been initiated. This was only on account of the negligence on the part of the Board of Directors and staff



members.



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8. It is only on considering the report that the surcharge proceedings under Section 87 of the Act, had been initiated. The Deputy Registrar had called for explanation and on the basis of the explanation, relevant records and deposition, surcharge order came to be passed in which direction was issued to the staffs and Board of Directors of the Bank to make good the loss which is caused to the Bank to the tune of Rs.1,18,59,570/-. Against which the petitioner is before this Court.

9. The contention of the respondents is that the enquiry had been conducted in a fair manner and therefore the order passed under Section 87 of the Act was very much in order. Therefore, there was no necessity to grant order of stay.



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10. The learned Judge of the Special Tribunal for Cooperative

Cases by order dated 18.02.2025 dismissed the said application by contending that the period of limitation starts from the date of detection of any act or omission by respondents 1 and 2. According to the learned Judge the date of detection was 22.01.2023 and therefore the respondents had time till 21.01.2030 to present the case. Therefore, it was not barred by limitation.

11. With reference to the point regarding the violation of the procedure under Section 87 (4) of the Act, the learned Judge would observe that the said procedure had been followed and the present application was only an attempt to prolong the proceedings.

12. Challenging the same the petitioner is before this Court.



13. Heard the learned counsels on the either side and perused the records.

14. A mere perusal of the surcharge order would clearly show that no opportunity to cross examine the witnesses by the petitioner had been granted and their statement has been taken at face value. Section 87 (4) of the Act provides as follows:

“When acting under this Section, the Registrar or their Authorised person has the same powers as a Civil Court under the Code of Civil Procedure, 1908 including the ability to summon witness and require document production, receive evidence on affidavits, and requisition public records from other Court or offices, and recover losses caused to a Co-operative Society through fraudulent activities”.



15. Therefore, from a mere reading of the order subject matter of an appeal, it is clearly evident that these principles have been given a total go-by by the authorities. Therefore, prima facie the petitioner has made out a case that the enquiry has not taken place in the manner known to law.

16. In the Judgement reported in **2012 (1) CWC 794 – M.Karuppannan Vs. The Deputy Registrar**, the learned Judge of this Court had considered the scope of Section 87 (4) and the procedure contemplated therein in the following words:

“As has been pointed out by the learned counsel for the petitioner under Section 87 (4) of the Act, the office, who is holding enquiry under Section 87 of the Act shall have all the powers of a Civil Court while trying a Civil Suit under the Code of Civil Procedure and he has got power to enforce the attendance of any person and examine him on oath and also receive evidence on



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Affidavits. This would clearly indicate that the Enquiry Officer, while holding enquiry under Section 87 of the Act, is to record evidence on oath or at least he should receive evidence on Affidavit from the parties. It is also clear that as per Section 87 (4) (e) of the Act, he has got power even to issue commission for examining of witnesses. Under Section 87 of the Act, the authority is directed to adjudicate upon the disputed facts on evidence to-be let in, either oral or documentary, if any adjudication is made it could surely be stated that it is out of sunrise and such finding is perverse, which cannot be sustained. In this case, a perusal of the award of the 1st respondent does not reflect recording of any oral evidence or reception of evidence on Affidavit or production of any documentary evidence. In fact, this Court directed the learned counsel appearing for the respondents 1 and 2 to produce the original records to



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ascertain as to whether the procedure contemplated under

Section 87 (4) of the Act was, in fact, followed or not.

The learned counsel after referring to the records would

submit that the Enquiry Officer perused the report of the

auditor. But, no oral evidence was recorded on the side

of the 2nd respondent. Instead, the statements of the

petitioner and the respondents 3 and 4 were recorded. It

is also not on oath as required under Section 87 (4) (a) of

the Act. Therefore, such statement cannot be treated as

oral evidence at all, for want of administration of oath.

There was no other evidence recorded and there was no

documentary evidence also exhibited. In view of the

above position, as rightly contended by the learned

counsel for the petitioner, there can be no difficulty in

holding that the adjudication made by the 1st respondent

is perverse as the same has been done on no evidence”.



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17. A mere reading of the above and the order on hand would clearly show that the aforesaid procedure has not been followed.

Therefore, the petitioner has made out a prima facie case regarding the manner in which the enquiry had taken place.

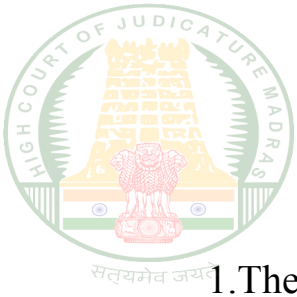
18. Therefore, the Civil Review Petition is allowed and the order passed in CMP.No.1 of 2025 in CMA (CS).No.4 of 2025 dated 18.02.2025 is set aside and stay is granted till disposal of the appeal. Consequently, the connected miscellaneous petition is closed. No costs.

08.08.2025

Index: Yes/No
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