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Cont.A.No.10 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Cont.A.No.10 of 2024

and

CMP.29158 of 2024

Z.Khalidha Banu,
The Deputy Registrar,
of Co-operative Societies,
Erode Circle, Erode - 9.

... Appellant

Vs.

C.Palanisamy

... Respondent

PRAYER: Petition filed under Section 19 of the Contempt of Court's Act, 1971 to set aside the order passed in contempt petition no.2922 of 2024 dated 06.12.2024 and purge the appellant from the contempt proceedings.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.C.Prakasam



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ORDER

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(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The contempt appeal on hand has been instituted to assail the order dated 06.12.2024 passed in Cont.P.No.2922 of 2024 in W.P.No.30477 of 2018.

2. The facts in brief required for consideration are that the writ court passed final orders in W.P.No.30477 of 2018 on 21.07.2023 directing the Deputy Registrar of Co-operative Societies, Erode Circle to pass final orders on the surcharge proceedings initiated against the respondent under Section 87 of the Tamil Nadu Co-operative Societies (TNCS) Act, 1983(hereinafter referred to as "the Act") within a period of six weeks from the date of receipt of a copy of the order.

3. Admittedly, the Deputy Registrar was not in a position to complete the surcharge proceedings within a period of six weeks as directed by the writ Court. Meanwhile, Writ Appeal No.1676 of 2024 has been instituted by the respondent and the same is pending now.



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4. During the pendency of the writ appeal, the respondent filed Contempt Petition No.2922 of 2024, to punish the Deputy Registrar for her wilful disobedience of the orders of the writ court dated 21.07.2023 in W.P.No.30477 of 2018. The learned Single Judge adjudicated the contempt proceedings and imposed a cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) on the Deputy Registrar of Co-operative Societies, which shall be paid to the respondent within a period of three weeks from the date of receipt of a copy of the order. Further, the Deputy Registrar was directed to refund the surcharge amount of Rs.1,82,000/- to the respondent, apart from the payment of costs. The said order in the contempt petition is the subject matter of the present contempt appeal on hand.

5. Section 81 of the Act stipulates inquiry. Section 82 is about inspection. During the course of statutory enquiry, if any misappropriation of funds or irregularities are identified into the affairs of the Co-operative Society, based on the statutory report filed under Section 81 of the Act, three-fold actions are permissible. The Authority competent may initiate disciplinary proceedings against the employees, a criminal case can be



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registered before the Commercial Crime Investigation Wing of police Department, thirdly, surcharge proceedings to recovery the financial loss caused to the Co-operative society. All the three actions can be initiated simultaneously and there is no bar for such initiation of simultaneous proceedings.

6. On initiation of surcharge proceedings under Section 87 of the Act, notice is to be issued by the Deputy Registrar having jurisdiction to the persons concerned to defend their case. An inquiry is to be conducted with reference to the documents and evidences available on record and if necessary by examining witnesses and thereafter, take a decision and pass final orders in the surcharge proceedings. Surcharge proceedings are to be conducted akin to that of Civil Suit under the Code of Civil Procedure. The final order passed under Section 87 of the Act can be appealed to the Special Tribunal for Co-operative cases/Sessions Judge under Section 152 of the Act. Thereafter, the person aggrieved may approach the High Court by way of Civil Revision Petition under Article 227 of the Constitution of India.



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7. In the context of scheme under the Tamil Nadu Co-operative Societies Act, on some occasions, the competent Authority under the Act may not be in a position to adhere to the time line fixed by the Court, the Statute or by the higher Authorities. Delay occurs may be on account of complex facts and circumstances, non-co-operation of the parties to complete the enquiry within the time line contemplated and several other unforeseen circumstances. Therefore, strict adherence of the time line fixed by the Courts may result in non-compliance on account of varieties of reasons. Such delay caused at all circumstances can be construed as wilful disobedience of the orders of the Court or the statute. Nor such delay caused in violation of the statutory time line prescribed can be a ground to invalidate the entire proceedings. In other words, the time limit prescribed under the statute in such circumstances, are directory in nature and cannot be construed as mandatory. In the event of considering the time limit as mandatory, the same will result in miscarriage of justice as the Co-operative Societies may not be in a position to recover the financial loss caused on account of misappropriation, irregularities, illegalities etc.,



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8. In the present case, the writ court fixed the time limit of six weeks to complete the surcharge proceedings by order dated 21.07.2023 in W.P.No.30477 of 2018. The appellant before this Court would submit that the present Deputy Registrar, Erode Circle took charge as Probation Deputy Registrar on 09.03.2024. Meanwhile, the respondent preferred W.A.No.1976 of 2024, which is pending even now. During the pendency of the writ appeal, the Deputy Registrar in the absence of an interim order conducted enquiry and passed final order in the surcharge proceedings under Section 87 of the Act in proceedings dated 25.09.2024 and the order was communicated to the respondent on 30.09.2024. On receipt of the surcharge order, the respondent filed contempt petition in Cont.P.No.2922 of 2024.

9. Regarding fixing of time limit to dispose of the cases, this Court is of the considered opinion that the courts are expected to consider the nature of cases and volume of materials to be considered by the Authorities before fixing any time limit to complete the proceedings. Routine orders of fixing time limit would do no service to the cause of



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justice. Contrarily, litigants are back again by way of filing a fresh writ petition or by filing contempt petition. In this context, the Hon'ble Supreme Court in the case of ***Sangram Sadashiv Suryavanshi Vs. The State of Maharashtra*** in ***Crl.A.No.4758 of 2024*** dated ***25.11.2024*** considered the principles. The Apex Court made observation that time bound directions issued by the High Court would adversely affect the functioning of the trial courts as in many trial courts there may be older cases of same category pending. The Apex Court relied on paragraph 47.3 of the decision of a Constitution Bench of the Supreme Court in the case of ***High Court Bar Association, Allahabad Vs. State of Uttar Pradesh & Ors.***, in ***Crl.APP. @ SLP (Crl.)No.13366 of 2024***. The court held that in the ordinary course, the Constitution Courts are refrained from fixing the time bound schedule for the disposal of the cases pending before any other courts. Paragraph 47.3 reads thus:

"47.3. Constitutional courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other courts. Constitutional courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the courts concerned where the cases are pending."



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10. In the above backdrop, the facts in the present case reveals that the Deputy Registrar took charge as Probation Officer in Erode Circle on 09.03.2024 and took efforts to complete the surcharge proceedings. She had completed the enquiry and passed final orders under Section 87 of the Act on 25.09.2024, which was communicated to the respondent on 30.09.2024. Therefore, there is no wilful disobedience of the orders of the learned Single Judge passed.

11. To punish an Authority under the contempt of Courts Act, mere disobedience of the orders of the court may not be sufficient and an element of wilful disobedience, which is indispensable is the requirement to be established for punishing an Authority. The said principle has been reiterated by the Apex Court in the case of *Anil Ratan Sarkar & Ors Vs. Hirak Ghosh & Ors* reported in *AIR 2002 SC 1405*.

12. In the present case, this Court do not find any wilful disobedience of the orders of the Court. Mere disobedience in the case of



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civil contempt cannot be construed as disobedience warranting invocation of contempt jurisdiction by this Court under the contempt of Courts Act.

That apart, the learned Single Judge has granted the relief in the impugned contempt order beyond the scope of the provisions of the contempt of courts act. The maximum punishment contemplated under Section 12 of Contempt of Courts Act is Simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both. However, in the impugned order, the learned Single Judge imposed the punishment of cost of Rs.25,000/- which is beyond the punishment contemplated under Section 12 of the contempt of Courts Act. That apart, in a contempt petition the courts are not empowered to grant any other further relief, which is otherwise not contemplated under the provisions of the Contempt of Courts Act.

13. In the present case, the contempt court directed the Deputy Registrar to refund a sum of Rs.1,82,000/-, which is the surcharge amount. Such a relief cannot be granted in a contempt proceedings. Therefore, we are inclined to interfere with the order impugned.



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14. Consequently, the contempt order dated 06.12.2024 passed in Cont.P.No.2922 of 2024 is set aside and the contempt appeal stands **allowed**. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [M.J.R., J.]
24.01.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To
1.The Deputy Registrar,
of Co-operative Societies,
Erode Circle, Erode - 9.



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AND
M.JOTHIRAMAN, J.

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