

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,  
COIMBATORE**

Present: **Tmt. G. VIJAYA, B.A., M.L., PGDCFS**  
Principal District Judge, Coimbatore.

Tuesday, this the 17<sup>th</sup> day of March 2026

திருவள்ளூர் ஆண்டு 2057 தமிழ் விசுவாவசு ஆண்டு பங்குனி மாதம் 03ம்  
நாள் செவ்வாய்கிழமை

**CIVIL MISCELLANEOUS APPEAL (CS) No.13/2022**

**CNR No.TNCB010081382021**

M.Bommuraj (49 years)  
Salesman (PDS),  
S/o.Nagappa Naicker,

... Appellant

/vs/

1. The Deputy Registrar of Co-operative Societies,  
Pollachi Circle,  
Pollachi – 642 002.

2. The President,  
K-1397 A. Ramanathanpuram Primary  
Agricultural Co-operative Credit Society,  
Chinnappampalayam,  
Anaimalai Taluk – 642 104.

... Respondents

This CMA has been filed by the Appellant against the Impugned  
Surcharge award passed by 1<sup>st</sup> Respondent in Na.Ka.No.1365/2019/Sa.Pa., in

S.C.02/2020/Sa.Pa. dated 03-09-2021 and served to the Appellant on 23-09-2021 by R.P.A.D.

Between :-

The President,  
K-1397, A-Ramanathapuram Primary  
Agricultural Co-operative Credit Society,  
Anamalai, Pollachi, Coimbatore District. ... Plaintiff

vs

1. Late C.M.Gopaldurai,  
Ex. President,  
S/o. Masa Naicker,  
2. K. Sivaraj  
Ex. Clerk/Secretary (In-charge),  
3. N.Bommuraj,  
Salesman (PDS),  
S/o. Nagappa Naicker,  
4. G. Kavitha,  
Saleswoman (PDS),  
W/o. Late. M. Srinivasam, ... Defendants

This CMA (CS) came up before me for final hearing on 16-03-2026 in the presence of **Smt.S.Sathiya Bhama**, Advocate for the Appellant, and of **Thiru. V.Arul Kumar, Government Pleader**, Advocate for the Respondents No.1 and 2 and upon perusing the records and hearing both side arguments and having stood over for consideration till this day, this Court passed the following

## **JUDGMENT**

This CMA has been filed by the Appellant against the Impugned Surcharge award passed by 1<sup>st</sup> Respondent in Na.Ka.No.1365/2019/Sa.Pa., in S.C.02/2020/Sa.Pa. dated 03-09-2021 and served to the Appellant on 23-09-2021, on the following:

### **2. APPEAL GROUNDS :-**

i. As per the Impugned Award in Na.Ka. No. 1365/2019/Sa.Pa. in S.C. No.02/2020/Sa.Pa. dated 03.09.2021, the Appellant was employed as Salesman from 04.02.1991 in the Ration Shop under the control of K.1397, A. Ramanathapuram Primary Agricultural Cooperative Society (hereinafter called the Case Society) and his service was regularized with effect from 17.09.2007 based on the Supreme Court Order. During the Audits in the years 2014-15, 2015-16 and 2016-17, a stock deficit to the tune of Rs.2,45,941/20 was found and this Appellant was charged with the allegation of causing the above-alleged stock deficit and was suspended from service by the then president of the Board with effect from 06.09.2018. Thereafter, an enquiry was conducted under Sec.81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter called "the said Act"). In the meanwhile, on the request made by this appellant to the then President and the Secretary, Sivaraj, the following receipt particulars towards

the sales amount remitted by the appellant was furnished.

Table-1:

S.No.	Date	Receipt No.	Amount.	
			Rs.	P.
1	12-01-2015	0385	9,165.00	
2	23-04-2015	0185	7,397.25	
3	24-03-2016	---	84,478.00	
4	23-02-2016	---	82,580.00	
<b>Total</b>			<b>1,83,620.85</b>	

On submission of the above receipts during Sec.81 enquiry, the same was not accepted, meanwhile, the Appellant was assured of re-employment on payment of the entire alleged deficit amount of Rs.2,45,945/20. Therefore, the Appellant arranged the funds by pledging the jewels of his wife and availing of a loan from friends and on approaching the society for reinstatement, he was forced to pay twice the sum of the alleged deficit to the tune of Rs.4,80,876/65 by the then Secretary of the Society, Balasubramanian and issued the following receipts.

Table-2:

Date	Receipt No.	Amount.	
		Rs.	P.
22-10-2018	201	53,938.70	
22-10-2018	348	1,10,000.00	
22-10-2018	202	1,10,000.00	
22-10-2018	203	65,184.00	
22-10-2018	204	55,794.40	

22-10-2018	205	14,331.10
22-10-2018	206	6,628.45
	152	65,000.00
<b>Total</b>		<b>4,80,876.65</b>

Thus, the Appellant paid a total sum of Rs.6,64,406.90/- to the case society towards the said false liability to the then Secretaries Sivaraj and Balasubramanian. After recovery of thrice the alleged charge amount from the Appellant, the then Special Officer of the 2<sup>nd</sup> Respondent society issued an order, reinstating the Appellant to service with stoppage of increment for next 2 years with cumulative the effect, excluding the leave period and further, the suspension period from 06.09.2016 to 28.06.2019 to be treated as a loss of pay. A resolution was passed to that effect. Accordingly, the Appellant joined to duty. While so, through Board Resolution, he was deputed to work as a Salesman in the A. Ramanathapuram Fair Price Shop, through proceeding dated 19.07.2019. Accordingly, he worked in the A. Ramanathapuram Fair Price shop. Thereafter, the President of the Board of the A. Ramanathapuram P.A.C.C.S issued a show cause Notice through Proceeding dated 29.11.2019, wherein it was stated that the Appellant has paid the entire alleged charge amount, but, he has to pay the interest of Rs,1,43,179/- to the 2<sup>nd</sup> Respondent society, failing which disciplinary proceeding will be initiated against him.

ii. Since the Appellant had already paid thrice the entire charge amount, he did not pay the interest amount. The Appellant was not paid his monthly salary amount from May 2015 to 15.09.2018. Despite repeated oral requests to pay his salary, the 2<sup>nd</sup> Respondent failed to consider the same. Similarly, this Appellant was not paid his subsistence allowance for the period from 06.09.2018 to 26.08.2019.

iii. Further, an amount of Rs.1,61,581.62 was kept in the Appellant's S.B.A/c No.75 and the entire balance in his account was also withdrawn by the Secretary, Balasubramaniam without the knowledge and consent of this Appellant prior to 29.10.2016, which was confirmed through the statement of the above Secretary and there was no amount left in the aforesaid S.B. Account. So, the Appellant could not remit his loan amount to the Coimbatore District Cooperative Employees Society.

iv. Thereafter, it was informed that the 2<sup>nd</sup> Respondent case society initiated a disciplinary proceeding against the then Secretary and so this Appellant was again intended to be kept under suspension and further, the resolution was sent to the 1<sup>st</sup> Respondent Deputy Registrar for approval and so the 2<sup>nd</sup> Respondent case society compelled the Appellant to hand over the charges to G.Kavitha, Saleswoman in Kuppichipudur Fair Price Shop and thereafter, without issuing

any suspension order, the Appellant was neither suspended from service nor was paid the subsistence allowance or monthly salary. But, he was not permitted to work in the fair price shop. Again, the Appellant was served with a Notice dated 26.08.2020, in that, it has been stated that the Appellant did not send any explanation to the charge memo dated 28.02.2020 and was also instructed to appear for enquiry under Sec.81 on 28.02.2020. Accordingly, the Appellant appeared before the enquiry officer and this Appellant was served with a Charge memo dated 28.02.2020; he was compelled to make an endorsement as if it was received on 28.02.2020. So, this Appellant had to receive the charge memo without putting the date under the signature. The Appellant sent his reply dated 14.09.2020 by R.P.A.D to the 2<sup>nd</sup> Respondent society, duly marking copies to Deputy Registrar and the Enquiry Officer.

v. Meanwhile, the 1<sup>st</sup> Respondent initiated the Surcharge proceedings under Sec.87(1) of T.N.C.S. Act, 1983 in S.C. No.02/2020 Sa. Pa., the Appellant was served with a Surcharge Show cause notice dated 17.11.2020 for the Surcharge Proceeding. For that, this Appellant requested some documents. In that, except the proceedings of the Deputy Registrar dated 06.05.2020, other documents were served to the Appellant on payment of Xerox charges. For the said Charge memo, this Appellant filed a detailed written statement in the above Surcharge

proceedings denying the charges and also regarding the recovery of the payment of more than thrice the charge amount totally to the tune of Rs.6,64,406.90 to the Society from this Appellant. The Appellant also filed the receipts issued by the then Secretary Sivaraj and Balasubramaniam for the said payments. The original receipts for those payments were not considered by the Deputy Registrar and without examining any witnesses on either side or marking any exhibits on both sides, simply passed the Impugned Award dated 03.09.2021, served to this Appellant on 23.09.2021 by R.P.A.D., holding this Appellant along with other Defendants for the charge covered under Item 1(1) for the charge amount of Rs.91,050.98. Against the said Impugned Award this appeal is being filed among other grounds.

- i. The Impugned Award is not a self-speaking order, biased and not justifiable according to law and on merits.
- ii. The detailed Written Statement filed by this Appellant in S.C. Na.Ka. No. 1365/2019/Sa.Pa. dated 17.11.2020 may be read as part and parcel along with this Appeal Memorandum.
- iii. The above Impugned Award is lacking in consideration of the following facts by the Deputy Registrar (i) merits in the written statement of the Appellant, (ii) payment receipts - recovery of more than thrice the charge

amount from the Appellant, (iii) non-payment of salary from May 2015 to September 2021, (iv) Prior punishment through Proceeding of the President of the 2<sup>nd</sup> Respondent Society dated 17.09.2019, (v) reinstating the Appellant to service with stoppage of increment for next 2 years with cumulative effect, excluding the leave period and further, the suspension period from 06.09.2016 to 28.06.2019 will be treated as loss of pay and hastily passed the Impugned Award. Hence the Impugned Award is nothing but modus operandi for recovery of the alleged charge amount at his choice several times from the Appellant and so the Impugned Award itself is not maintainable in law and on merits and is liable to be set aside. No accurate calculation for the Surcharge Award Amount is furnished to the Appellant, as to the charge covered under Item-1.

iv. The Appellant was held liable and responsible for the charges covered under Items Nos. 1(1) to 1(3). Though the 1<sup>st</sup> Respondent mentioned the facts in the Appellant's written statement dated 21.04.2021 at Page Nos.9, 10 & 11 in the Impugned Award, they were not considered by the 1<sup>st</sup> Respondent and hastily passed the above Impugned Award, holding him liable and responsible along with the then Secretary K.Sivaraj totally to the tune of Rs.91,050.98 without any correct details.

v. In the said Surcharge Proceeding, none of the witnesses on either side were

examined; no documents were marked on both sides by the 1<sup>st</sup> Respondent Deputy Registrar of Co-op. Societies, Pollachi. None of the documents was shown to the Defendants during the enquiry in the surcharge proceeding. The Appellant was not permitted to cross-examine witnesses in the above case. Hence there was a gross violation of Natural Justice in conducting the said proceedings.

vi. After having collected thrice the allegation/charge amount, the Deputy Registrar is not entitled to initiate the Surcharge Proceedings against this Appellant. There is no prima facie to initiate the surcharge proceeding against this Appellant.

vii. The then Secretary of the 2<sup>nd</sup> Respondent Society Sivaraj (2<sup>nd</sup> Defendant in the surcharge proceedings) was dismissed from service on misappropriation charges on 04.02.2015. Thereafter the 3<sup>rd</sup> Defendant G. Kavitha was appointed as Secretary in charge from 04.02.2015 to October 2015 and P. Balasubramaniam was appointed as Secretary of the 2<sup>nd</sup> Respondent Society from October 2015 up to 2020.

viii. The amount paid by him i.e., Rs.21,674.95 and Rs.91,050.98 were not considered by the Deputy Registrar/1<sup>st</sup> Respondent and despite repeated requests to furnish the details regarding the alleged charge amount of

Rs.91,050.98 was not furnished to the Appellant by the Respondents till the disposal of the surcharge case.

ix. Similarly the averments stated on Page 10 at Para 3 that the Appellant had accepted the liability was totally wrong; the signature of the Appellant was obtained forcibly and also under compulsion by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and it is not sustainable in law and on merits.

x. None of the copies of documents 1 to 14 mentioned in the Impugned Award on Page 34 was furnished to this Appellant nor shown to him during the enquiry in the above surcharge proceedings and so, the Surcharge is proceeding and the Impugned Award is not justifiable according to law and on merits.

xi. None of the allegations raised against him was proved through substantial material evidence and documents in the Surcharge Proceedings and so, they were not proved against this Appellant beyond reasonable doubt.

xii. If the collected sales amount was not properly accounted for in the society records and if it was misappropriated and monetary loss caused by the Secretary and the President of the 2<sup>nd</sup> Respondent Society, then the concerned Secretary, President and the Clerk are only liable and responsible to make good the same with interest till the date of realisation of the said amount and the 1<sup>st</sup> Respondent is also liable to recover the same from the concerned employees as stated above

and not from this Appellant. So also the above Impugned Award is liable to be set aside as not justifiable in law.

xiii. None of the ingredients as laid under Sec.87(1) of the T.N.C.S. Act, 1983 for the charges leveled against this Appellant were proved through any clinching evidence or records in the Surcharge Proceedings. As such, this Appellant could not be held liable or responsible. The charge as to the alleged loss caused to the Society to the tune of Rs.91,050.98 by this Appellant was not established; no breakup of figures was given. The amount paid by this Appellant towards the above charges were not considered by the Deputy Registrar.

xiv. As per the Byelaw of the 2<sup>nd</sup> Respondent Society and according to Sec.84 of the T.N.C.S. Act, 1983, the Principal paid officer and chief executive of the case society - the Secretary and the Special Officer/President only are liable and responsible for all the alleged charges and the alleged monetary loss caused to the society ought to have been recovered from them only and not from this Appellant.

xv. No proof or no memos or demand notices issued to this Appellant. demanding to hand over the sales amount or other records or recovered at any point of time during the allegation period, was established by the Society

officials or the Secretary of the case Society or the Deputy Registrar of Co-op. Societies, Pollachi during the Surcharge Proceeding or in the Sec.81 enquiry; also, no complaint made from the public or the officials against this Appellant and so, the above case is a false case, created to safeguard the department officials.

xvi. In the Audit Reports for the period 2014-15 no stock deficit or loss to the tune of Rs.1,04,510.18 was found. There is no remark or charge against this Appellant. Similarly, the deficit amount mentioned in the audit report for the year 2015-16 was already recovered from this Appellant, no such recovery was pending from this Appellant. Further, the charge amount covered under Item 1(1) to 1(3), 2(1) and 2(2) were already recovered from this Appellant vide Table 1 and 2 mentioned in the Brief history of the appeal, as such the 1<sup>st</sup> Respondent is not entitled to hold this Appellant as liable and responsible or direct him to pay the said amount with interest. This amounts to Double Jeopardy, as laid under Article 20(2) of Indian Constitutional law and he was already penalized for the same charge, he could not also be punished for the same charge. Therefore also, the Impugned Surcharge Award is liable to be set aside about the charges leveled against him.

xvii. As per the Audit Report for the period 2014-15, the stock deficit was

shown as Rs.19,731/55 only and so, the amount mentioned in the impugned award is nothing but an exaggerated one. The impugned award with regard to item 1 is lacking for want of details. Therefore, the 1<sup>st</sup> Respondent, without applying his mind and appreciating the payment made by this Appellant and without even verifying the audit reports and other records properly, passed the impugned award for reasons best known to him.

xviii. The Appellant reserves his right to file additional grounds and additional documents, if any, in future with the permission of this Appellate Tribunal. The Appellant is filing a separate petition for the stay of operation of the consequential execution proceeding in the above matter.

xix. Copy of the Impugned Award passed by the 1<sup>st</sup> Respondent in S.C.02/2020/Sa.Pa. dated 03.09.2021 was served to this Appellant on 23.09.2021 by R.P.A.D. and this appeal is ought to have been filed on or before 21.11.2021 within 60 days from the date of receipt of the award by the Appellant. But, due to health problems and family circumstances, the Appellant could not file this appeal in time and hence a delay of 18 (i.e., 22.11.2021 to 09.12.2021) days has crept in, in the filing of this appeal. This appeal is being filed today (09.12.2021). A separate Delay Condonation petition is also filed along with this appeal.

xx. Under the above circumstance, the Appellant prays that this Appellate Tribunal may kindly be pleased to entertain this appeal, call for records from the 2<sup>nd</sup> Respondent case society, hear both sides and pass orders:

- i. to set aside the Impugned Award passed by the 1<sup>st</sup> Respondent in S.C.No.02/2020/Sa.Pa. dated 03.09.2021,
- ii. to discharge the Appellant from the liability of the Impugned Award and
- iii. such other and further order as deemed fit in the circumstances of this case, by allowing this appeal and render justice.

**3. POINTS FOR CONSIDERATION:-**

- i. Whether the impugned Surcharge Order No.1365/2019/5a.Pa (SO 02/2020) dated 03.09.2021 passed by the 1<sup>st</sup> Respondent is liable to be set aside as not sustainable in the eye of law?
- ii. To what other relief?

**4.** In the Civil Miscellaneous Appeal no oral evidence was let in and no document was marked on both sides.

**POINT :-**

**5.** Heard both sides and perused the relevant records. The present Civil

Miscellaneous Appeal is preferred by the Appellant, against the impugned Surcharge Order No.1365/2019/5a.Pa (SO 02/2020) dated 03.09.2021 passed by the 1<sup>st</sup> Respondent. On perusal of the records it reveals that based on the Audit Report pertaining to the year 2014-2017 order was passed to conduct enquiry regarding certain alleged deficiencies pointed out in the said Report.

6. Further on perusal of records it reveals that, based on the Audit Report of the year 2014 to 2017, initially recommendation was given to recover a sum of Rs.18,06,114.88, on 14 heads from the Appellant and 3 others alleging certain discrepancies in the maintaining of the Society's Accounts. Later after enquiry the impugned Surcharge Order was issued against the Appellant D3 and 2 persons alone i.e D1 to D3 alone for a sum of Rs.16,46,009.73 on 9 heads i.e;

Item 1(1) against D2 & D3; and

Item 3(1) against D1 & D2; and

Item 3(2) against D2; and

Item 4(1) against D1 & D2; and

Item 4(2) against D1 & D2; and

Item 4(3) against D1; and

Item 4(4) against D1; and

Item 5(1) against D1 & D2; and

Item 6(1) against D2;

And the other 5 items were dropped by the Respondents 1 and 2 for the reasons stated by them in the impugned order.

7. Disputing the impugned order, D3/the salesman preferred the present Civil Miscellaneous Appeal and D1 preferred CMA.No.15 of 2022 pending on the file of this Tribunal/Court; and D2 is facing Criminal Proceedings pending on the file of Judicial Magistrate No.IV, Coimbatore.

8. All the above said are not disputed or denied by the Respondents. Hence now in the above narrated facts and circumstances of the case it is to be seen as to whether the impugned Surcharge Order dated 03.09.2021 issued by the 1<sup>st</sup> Respondent against D3 for the items Item 1(1) is liable to be dismissed or not.

9. It is the allegation of the 1<sup>st</sup> Respondent that, the salesman/D3 has fabricated the Society's Account and a sum of Rs.1,04,510.18 was not accounted in the Society's Account books and based on the recommendation of the enquiry Officer action was taken against D3 for stock deficit and during enquiry it was held that, D3 and D2 are jointly liable for the said loss to the Society.

**10.** Per contra it is the contention of D3 that, the Appellant was employed as Salesman from 04.02.1991 in the Ration Shop under the control of K.1397, A. Ramanathapuram Primary Agricultural Cooperative Society (hereinafter called the Case Society) and his service was regularized with effect from 17.09.2007 based on the Supreme Court Order.

**11.** The Appellant would further contend that, during the Audits in the years 2014-15, 2015-16 and 2016-17, a stock deficit to the tune of Rs.2,45,941/20 was found and the Appellant was charged with the allegation of causing the above alleged stock deficit and was suspended from service by the then president of the Board with effect from 06.09.2018. Thereafter, an enquiry was conducted under Sec.81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter called "the said Act"). In the meanwhile, on the request made by the Appellant to the then President and the Secretary, Sivaraj, the following receipt particulars towards the sales amount remitted by the appellant was furnished.

Table-1:

S.No.	Date	Receipt No.	Amount.	
			Rs.	P.
1	12-01-2015	0385	9,165.00	
2	23-04-2015	0185	7,397.25	
3	24-03-2016	---	84,478.00	
4	23-02-2016	---	82,580.00	

<b>Total</b>	<b>1,83,620.85</b>
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12. The Appellant would further contend that, on submission of the above receipts during Sec.81 enquiry, the same was not accepted, meanwhile, the Appellant was assured of re-employment on payment of the entire alleged deficit amount of Rs.2,45,945.20. Therefore, the Appellant arranged the funds by pledging the jewels of his wife and availing of a loan from friends and on approaching the society for reinstatement, he was forced to pay twice the sum of the alleged deficit to the tune of Rs.4,80,876/65 by the then Secretary of the Society, Balasubramanian and issued the following receipts.

Table-2:

Date	Receipt No.	Amount.	
		Rs.	P.
22-10-2018	201	53,938.70	
22-10-2018	348	1,10,000.00	
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22-10-2018	203	65,184.00	
22-10-2018	204	55,794.40	
22-10-2018	205	14,331.10	
22-10-2018	206	6,628.45	
	152	65,000.00	
<b>Total</b>		<b>4,80,876.65</b>	

13. The Appellant would further contend that, thus, the Appellant paid a total sum of Rs.6,64,406.90/- to the case society towards the said false liability to the

then Secretaries Sivaraj and Balasubramanian. After recovery of thrice the alleged charge amount from the Appellant, the then Special Officer of the 2<sup>nd</sup> Respondent society issued an order, reinstating the Appellant to service with stoppage of increment for next 2 years with cumulative the effect, excluding the leave period and further, the suspension period from 06.09.2016 to 28.06.2019 to be treated as a loss of pay. A resolution was passed to that effect. Accordingly, the Appellant joined to duty. While so, through Board Resolution, he was deputed to work as a Salesman in the A. Ramanathapuram Fair Price Shop, through proceeding dated 19.07.2019. Accordingly, he worked in the A. Ramanathapuram Fair Price shop. Thereafter, the President of the Board of the A. Ramanathapuram P.A.C.C.S issued a show cause Notice through Proceeding dated 29.11.2019, wherein it was stated that the Appellant has paid the entire alleged charge amount, but, he has to pay the interest of Rs,1,43,179/- to the 2<sup>nd</sup> Respondent society, failing which disciplinary proceeding will be initiated against him.

**14.** The Appellant would further contend that, since the Appellant had already paid thrice the entire charge amount, he did not pay the interest amount. The Appellant was not paid his monthly salary amount from May 2015 to

15.09.2018. Despite repeated oral requests to pay his salary, the 2<sup>nd</sup> Respondent failed to consider the same. Similarly, this Appellant was not paid his subsistence allowance for the period from 06.09.2018 to 26.08.2019.

**15.** The Appellant would further contend that, further, an amount of Rs.1,61,581.62 was kept in the Appellant's S.B.A/c No.75 and the entire balance in his account was also withdrawn by the Secretary, Balasubramaniam without the knowledge and consent of this Appellant prior to 29.10.2016, which was confirmed through the statement of the above Secretary and there was no amount left in the aforesaid S.B. Account. So, the Appellant could not remit his loan amount to the Coimbatore District Cooperative Employees Society.

**16.** The Appellant would further contend that, thereafter, it was informed that the 2<sup>nd</sup> Respondent case society initiated a disciplinary proceeding against the then Secretary and so the Appellant was again intended to be kept under suspension and further, the resolution was sent to the 1<sup>st</sup> Respondent Deputy Registrar for approval and so the 2<sup>nd</sup> Respondent case society compelled the Appellant to hand over the charges to G.Kavitha, Saleswoman in Kuppichipudur Fair Price Shop and thereafter, without issuing any suspension

order, the Appellant was neither suspended from service nor was paid the subsistence allowance or monthly salary. But, he was not permitted to work in the fair price shop. Again, the Appellant was served with a Notice dated 26.08.2020, in that, it has been stated that the Appellant did not send any explanation to the charge memo dated 28.02.2020 and was also instructed to appear for enquiry under Sec.81 on 28.02.2020. Accordingly, the Appellant appeared before the enquiry officer and the Appellant was served with a Charge memo dated 28.02.2020; he was compelled to make an endorsement as if it was received on 28.02.2020. So, the Appellant had to receive the charge memo without putting the date under the signature. The Appellant sent his reply dated 14.09.2020 by R.P.A.D to the 2<sup>nd</sup> Respondent society, duly marking copies to Deputy Registrar and the Enquiry Officer.

**17.** The Appellant would further contend that, meanwhile, the 1<sup>st</sup> Respondent initiated the Surcharge proceedings under Sec.87(1) of T.N.C.S. Act, 1983 in S.C. No.02/2020 Sa. Pa., the Appellant was served with a Surcharge Show cause notice dated 17.11.2020 for the Surcharge Proceeding. For that, the Appellant requested some documents. In that, except the proceedings of the Deputy Registrar dated 06.05.2020, other documents were served to the

Appellant on payment of Xerox charges. For the said Charge memo, the Appellant filed a detailed written statement in the above Surcharge proceedings denying the charges and also regarding the recovery of the payment of more than thrice the charge amount totally to the tune of Rs.6,64,406.90 to the Society from the Appellant. The Appellant also filed the receipts issued by the then Secretary Sivaraj and Balasubramaniam for the said payments. The original receipts for those payments were not considered by the Deputy Registrar and without examining any witnesses on either side or marking any exhibits on both sides, simply passed the Impugned Award dated 03.09.2021, served to the Appellant on 23.09.2021 by R.P.A.D., holding the Appellant along with other Defendants for the charge covered under Item 1(1) for the charge amount of Rs.91,050.98. Against the said Impugned Award this appeal is being filed among other grounds.

**18.** The Appellant would further contend that, in the said Surcharge Proceeding, none of the witnesses on either side were examined; no documents were marked on both sides by the 1<sup>st</sup> Respondent Deputy Registrar of Co-op. Societies, Pollachi. None of the documents was shown to the Defendants during the enquiry in the surcharge proceeding. The Appellant was not permitted to

cross-examine witnesses in the above case. Hence there was a gross violation of Natural Justice in conducting the said proceedings.

**19.** The Appellant would further contend that, after having collected thrice the allegation/charge amount, the Deputy Registrar is not entitled to initiate the Surcharge Proceedings against this Appellant. There is no prima facie to initiate the surcharge proceeding against this Appellant.

**20.** The Appellant would further contend that, the then Secretary of the 2<sup>nd</sup> Respondent Society Sivaraj (2<sup>nd</sup> Defendant in the surcharge proceedings) was dismissed from service on misappropriation charges on 04.02.2015. Thereafter the 3<sup>rd</sup> Defendant G. Kavitha was appointed as Secretary in charge from 04.02.2015 to October 2015 and P. Balasubramaniam was appointed as Secretary of the 2<sup>nd</sup> Respondent Society from October 2015 up to 2020.

**21.** The Appellant would further contend that, the amount paid by him i.e., Rs.21,674.95 and Rs.91,050.98 were not considered by the Deputy Registrar/1<sup>st</sup> Respondent and despite repeated requests to furnish the details regarding the alleged charge amount of Rs.91,050.98 was not furnished to the Appellant by the Respondents till the disposal of the surcharge case.

**22.** The Appellant would further contend that, the averments stated on Page 10 at Para 3 that the Appellant had accepted the liability was totally wrong; the signature of the Appellant was obtained forcibly and also under compulsion by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and it is not sustainable in law and on merits.

**23.** The Appellant would further contend that, none of the copies of documents 1 to 14 mentioned in the Impugned Award on Page 34 was furnished to the Appellant nor shown to him during the enquiry in the above surcharge proceedings and so, the Surcharge is proceeding and the Impugned Award is not justifiable according to law and on merits.

**24.** The Appellant would further contend that, none of the allegations raised against him was proved through substantial material evidence and documents in the Surcharge Proceedings and so, they were not proved against the Appellant beyond reasonable doubt.

**25.** The Appellant would further contend that, if the collected sales amount was not properly accounted for in the society records and if it was misappropriated and monetary loss caused by the Secretary and the President of the 2<sup>nd</sup>

Respondent Society, then the concerned Secretary, President and the Clerk are only liable and responsible to make good the same with interest till the date of realisation of the said amount and the 1<sup>st</sup> Respondent is also liable to recover the same from the concerned employees as stated above and not from this Appellant. So also the above Impugned Award is liable to be set aside as not justifiable in law.

**26.** The Appellant would further contend that, none of the ingredients as laid under Sec.87(1) of the T.N.C.S. Act, 1983 for the charges leveled against this Appellant were proved through any clinching evidence or records in the Surcharge Proceedings. As such, the Appellant could not be held liable or responsible. The charge as to the alleged loss caused to the Society to the tune of Rs.91,050.98 by the Appellant was not established; no breakup of figures was given. The amount paid by the Appellant towards the above charges were not considered by the Deputy Registrar.

**27.** The Appellant would further contend that, as per the Byelaw of the 2<sup>nd</sup> Respondent Society and according to Sec.84 of the T.N.C.S. Act, 1983, the Principal paid officer and chief executive of the case society - the Secretary and

the Special Officer/President only are liable and responsible for all the alleged charges and the alleged monetary loss caused to the society ought to have been recovered from them only and not from this Appellant.

**28.** The Appellant would further contend that, no proof or no memos or demand notices issued to the Appellant demanding to hand over the sales amount or other records or recovered at any point of time during the allegation period, was established by the Society officials or the Secretary of the case Society or the Deputy Registrar of Co-op. Societies, Pollachi during the Surcharge Proceeding or in the Sec.81 enquiry; also, no complaint made from the public or the officials against the Appellant and so, the above case is a false case, created to safeguard the department officials.

**29.** The Appellant would further contend that, in the Audit Reports for the period 2014-15 no stock deficit or loss to the tune of Rs.1,04,510.18 was found. There is no remark or charge against the Appellant. Similarly, the deficit amount mentioned in the audit report for the year 2015-16 was already recovered from the Appellant, no such recovery was pending from the Appellant. Further, the charge amount covered under Item 1(1) to 1(3), 2(1) and

2(2) were already recovered from the Appellant vide Table 1 and 2 mentioned in the Brief history of the appeal, as such the 1<sup>st</sup> Respondent is not entitled to hold the Appellant as liable and responsible or direct him to pay the said amount with interest. This amounts to Double Jeopardy, as laid under Article 20(2) of Indian Constitutional law and he was already penalized for the same charge, he could not also be punished for the same charge. Therefore also, the Impugned Surcharge Award is liable to be set aside about the charges leveled against him.

**30.** The Appellant would further contend that, as per the Audit Report for the period 2014-15, the stock deficit was shown as Rs.19,731/55 only and so, the amount mentioned in the impugned award is nothing but an exaggerated one. The impugned award with regard to item 1 is lacking for want of details. Therefore, the 1<sup>st</sup> Respondent, without applying his mind and appreciating the payment made by this Appellant and without even verifying the audit reports and other records properly, passed the impugned award for reasons best known to him.

**31.** This Court has given its anxious consideration on the rival contentions of both the parties. On perusal of the impugned order, initially the present Appellant was held liable for item 1(1), 1(2), 1(3), 2(1), 2(2) for a total sum of

Rs.1,59,075.53. However, after perusing the records and submissions made by the present Appellant in the impugned order, finally, the 1<sup>st</sup> Respondent has held that the present Appellant/D3 is liable to pay a sum of Rs.91,050.98 for item 1(1) along with D2 and in respect of other items, his name was not included. Therefore, according to the 1<sup>st</sup> Respondent, the present Appellant is liable to pay a sum of Rs.91,050.98 along with D2 for item 1(1) alone.

**32.** However, on perusal of back records, it is evident that, the present Appellant has totally paid a sum of Rs.6,64,406.90 through various receipts and further the learned Government Pleader has also not denied about the payments made by the present Appellant. Though originally the present Appellant was made liable to pay a sum of Rs.1,59,075.53, however, as narrated above, in the impugned order, he was made liable to pay only for Rs.91,050.98 for item 1(1) alone. However, there is no explanation whatsoever by the 1<sup>st</sup> Respondent in the impugned order as to why all the payments made by the Appellant were not reflected in the impugned order except mentioning small portion of amount. Though in page No.23 of the impugned order, the 1<sup>st</sup> Respondent has mentioned about the payment of Rs.55,794.40 by the Appellant which was adjusted for the alleged loss mentioned in item 1(2), item 1(3) and the balance of Rs.13,459.20 was adjusted towards 1(1) and demanded for the remaining amount of

Rs.91,090.98, however, the Respondents have miserably failed to mention about the other payments made by the Appellant herein and it is not the case of the Respondents that, the Appellant herein is also liable to pay for other alleged discrepancies.

**33.** As pointed out by the present Appellant, it reveals that, the Appellant has totally remitted a sum of Rs.6,64,406.90 which is much more than the actual amount claimed by the 1<sup>st</sup> Respondent. Further, it is admitted fact that, disciplinary proceedings were initiated by the authorities against the Appellant and in that disciplinary proceedings dated 28-06-2019, the enquiry officer has categorically stated that, as the Appellant has paid all the dues, charges were proved against him and awarded punishment of awarding stoppage of 2 years increment with cumulative effect, which goes to show that the Appellant has paid all the alleged deficit amount to the Society. However, without considering the above, the 1<sup>st</sup> Respondent has passed the impugned order as against D3 for item 1(1).

**34.** Therefore, taking into consideration of the payments made by the Appellant herein which is not disputed by the Respondents 1 and 2, this Court is of the considered view that, once again the Appellant cannot be made liable to pay for

the alleged deficit payments mentioned in item 1(1). Hence, this Court is of the considered view that the impugned order in respect of item 1(1) as against the Appellant/D3 is liable to be set aside.

**POINT NO.2:-** To what other relief?

**35.** Therefore taking into consideration of all the above, this Court is of the considered view that the Appellant is not entitled for any other relief. Hence the point No.2 is answered accordingly.

In fine,

This Civil Miscellaneous Appeal is allowed and the Surcharge Order dated 03-09-2021 in Surcharge Proceedings Na.Ka.No.1365/2019/Sa.Ba S.C.02/2020/Sa Ba against the D3 M.Bommuraj is hereby set aside. However there is no order as to cost.

This Judgment is dictated to the steno typist directly, typed by her in the system, corrected and pronounced by me in the open court, this the 17<sup>th</sup> day of March 2026.

PRINCIPAL DISTRICT JUDGE,  
COIMBATORE.

FAIR/DRAFT JUDGMENT  
CMA (CS) No.13/2022  
DATED : 17-03-2026  
PDJ, CBE.