

**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 17th day of March 2026

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

CIVIL MISCELLANEOUS APPEAL (CS) No.15/2022

CNR No.TNCB010086002021

1. G.Jeyamani
2. G.Arun Prasath

... Appellants /
Legalheirs of
C.M.Gopaldorai

/vs/

1. The Deputy Registrar of Co-operative Societies, Pollachi, Coimbatore District.

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

... Respondents / Petitioner

This CMA has been filed by the Appellants against the Surcharge order passed by 1st Respondent in ந.க.நெ.1365/2019/Sa.Ba., in S.C.02/2020/Sa.Ba. dated 03-09-2021.

Between :-

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

... Petitioner

vs

1. C.M.Gopaldurai,
Former President
2. K. Sivaraj
Clerk/Secretary (In-charge)
3. N.Bommuraj,
Salesman
4. G. Kavitha,
Salesman

... Respondents

This CMA (CS) came up before me for final hearing on 16-03-2026 in the presence of **Thiru.T.Vivekanandan**, Advocate for the Appellants, and of **Thiru. V. Arul Kumar, Government Pleader**, Advocate for the 1st Respondent and the 2nd Respondent remained ex-parte 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 Appellants against the Surcharge order passed by 1st Respondent in ந.க.நெ.1365/2019/Sa.Ba., in S.C.02/2020/Sa.Ba. dated 03-09-2021.

2. APPEAL GROUNDS :-

- i. The Surcharge order passed by the 1st Respondent is against law, weight of evidence and probabilities of the case.
- ii. The 1st Appellant is the wife and 2nd Appellant is the son of one C.M.Gopaldurai. He was the Former President of the 2nd Respondent Society till 19.7.2017. During the pendency of the surcharge proceedings, on 18.05.2021, he died leaving behind the Appellants as legal heirs to succeed the estate left behind by him.
- iii. The 1st Respondent ought to have seen that the first Appellant is a Cancer Patient. Due to the sudden demise of her husband, the entire family is suffering a lot, but, first Respondent is compelling the Appellants to prosecute the case. Finally, without giving any opportunity on 03.09.2021, an ex-parte surcharge order was passed by the first Respondent against the Appellants. So, on that ground alone, the surcharge order to be set aside.

iv. The first Respondent has failed to consider that, the Secretary is the Chief Executive of the Society. As per the bylaw Cl.38, Secretary is a competent person to maintain cash balance, mortgages, stocks and all Assets of the Society, particularly, he bound to maintain all the records and in addition to that, Sec.84 of TNCS Act defines that the Chief Executive of registered Society is bound to keep and maintain accounts and books relating to that Society in such manner as may be prescribed.

v. The first Respondent has misconceived Sec. 84 of TNCS Act, because, if no such Chief Executive or Secretary, President of the Society is bound to maintain accounts. But unfortunately, the first Respondent has come to conclusion that the deceased President had failed to supervise accounts and cash Balance of the Society and thereby, he is liable to the alleged misappropriation along with the Secretary.

vi. The first Respondent has initiated an action Under Sec.81 of the TNCS Act, while, 2019 exactly after relieving from the Post of the President. So, the successor and Secretary are liable to furnish all accounts and related documents to the periodical audit. Further, Section 81 Enquiry Report submitted by the Enquiry Officer is a biased, because, without perusal or analyzing the relevant

documents and without any concrete evidence against the former President, simply, recommended to initiate an action under Sec.87 of TNCS Act.

vii. The first Respondent has leveled 12 charges against the former President by their show cause notice dated 17.11.2020. After receiving the impugned notice, husband of the first Appellant had given a suitable reply dated 01.12.2020. However, the husband of the first Appellant required some documents for further proceedings. But unfortunately, due to Covid-19, he died on 18.05.2021. Anyhow, after the enquiry, first Respondent dropped 6 charges and passed an order only with regard to 6 charges No. 3(1), 4(1), 4(2), 4(3), 4(4) and 5(1).

viii. Charge No.3(1):-

The first Respondent has failed to consider that the sale proceeds of Pesticide was not remitted by the Secretary and not by the former President. At the time of enquiry under Sec.81 of TNCS Act, Enquiry Officer has given an observation that Sales Chitta, purchase bills and Liability Register of pesticides, were not produced by the Secretary. No doubt, Secretary is a proper person to maintain the sales and purchase of the pesticide. So, merely signing in the Day book is not a ground for fastening the liability against the President. To prove the same, first Respondent themselves admitted that as per the bylaw, Cl.38, Secretary is alone liable to the all transactions of the pesticide.

ix. The first Respondent ought to have seen that Charge No.4(1) is completely depends upon the Secretary of the Society, because, the allegation is without any voucher, expenses have been carried out by the Secretary in the Daybook. Actually, the so called expenses is true, to prove that page No.20 of the Enquiry Report under Sec.81 of TNCS Act is clearly admitted by the Enquiry Officer. The former president was relieved from his post on 19.07.2017 and after lapse of 2 years, an enquiry was conducted by the Enquiry Officer. So, the Secretary as well as Successor failed to furnish all the documents to the Enquiry Officer. Again, at the time of enquiry before the first Respondent, Secretary himself admitted that SL.No.10 of the expenses is concerned, he is going to pay such amount of Rs.55,000/- to the Society. So, at this juncture, the question of joint liability with the Secretary against the former President is unknown to law as well as violation of Sec.87 of TNCS Act.

x. The first Respondent is totally misconceived the Charge No.4(2), because, this charge is pertaining to omission of Cash balance. As already pointed out that the Secretary is a competent authority with regard to the Cash transaction and furthermore, Daybook was maintained by the Secretary. So, he bound to carry out the day today transaction of the Society. On 09.03.2015, without any voucher, Secretary carried over the expenses a sum of Rs.9,92,210/-. On the

other hand, Central Co-operative Bank of Anamalai and Coimbatore District Primary Agricultural Co-operative Credit Society Employees Union have given a confirmation Certificate with regard to the so called amount. Obviously, on 31.03.2015, former President did not put his signature in the Daybook. The so called expense amount may be carried out during April 2015. Whereas, first Respondent has to verify the audit period of 2015-2016 and then only first Respondent can come to conclusion in this regard.

xi. As far as the charge No.4(3) is concerned, first Respondent ought to have seen that the former President is not a proper authority to maintain Cash balance, because, as per the duties and responsibilities, Cash balance is under the control of Secretary. On 12.04.2016, the then Secretary was suspended by the Society and thereafter, as per the Resolution passed by the elected body, G.Kavitha, who is the salesman was appointed as a Secretary (in-charge) and thereafter, she was maintained the Daybook. Finally, one Balasubramaniam was transferred from the Singanallur Society to the second Respondent Society as Secretary. So, the above said persons are proper persons to speak about the alleged omission of Cash balance. But unfortunately, these persons were not examined by the Enquiry Officer.

xii. The first Respondent has failed to consider that Charge No.4(4) is relating

to the expenses (Detail Less Expenditure) of the Society, because, during the periodical audit of 2016-2017, an objection was raised by the Auditor that without any voucher the so called amount was carried out in the Daybook. No doubt, the entire records are under the custody of the Secretary and each and every entry of business transactions are to be carried over by the Secretary. However, Page No.27 of Sec 81 of the Enquiry Report, these expenses were scrutinized by the Enquiry Officer. But, unfortunately, the related documents of the Voucher were not perused by the Enquiry Officer. For an example, Payment of stamp paper and expenses of Computer operator etc.

xiii. The first Respondent has failed to consider that, as far as, the Charge between the Secretary and his wife, because, the so called No.5 (1) M.Suseela is the wife of the Secretary. Furthermore, the Enquiry Officer has not obtained any statement from M.Suseela. The Secretary is alone dealt with the Savings Account. If really, a Voucher was fabricated, Secretary has to answer to M.Suseela.

xiv. Prima facie, Sec.87 of the Surcharge Proceedings does not arise against the former President, because, he did not commit any actionable wrong either by commission or omission in a deliberate and reprehensible manner, with reckless callousness and a supine indifference, without taking due care and caution

ordinarily expected from a reasonable and prudent man, under those existing circumstances. In the business of such categorical finding by the first Respondent, it is not possible to mulct the former President with the loss caused to the Society.

xv. Due to the onset Covid 19 pandemic situation, the Hon'ble Supreme Court of India by order dated 10-01-2022 extended the period of limitation with effect from 15-03-2020 till 28-02-2022. The Order was extended from time to time. The Hon'ble Supreme Court of India in suo moto writ petition (civil) No.3 / 2020 in M.A. No.21/2022 with following directions, the order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021 it is directed that the period from 15.03.2020 till 28.02.2022 shall stand extended for the purposes of limitation as may be prescribed under any general or specific law in respect to all judicial (or) Quasi Judicial proceedings. The appellant is a quasi government body and due to Covid-19 pandemic situation, the plaintiff is busy in vaccinating the people and hence the Plaintiff is not able to file the suit in time. Hence the suit is not barred by limitation, the Plaintiff is neither willful nor negligent.

xvi. It is therefore prayed to set aside the surcharge order passed by the first Respondent in ந.க.நெ.1365/2019/Sa.Ba., in S.C.02/2020/Sa.Ba. dated

03.09.2021 by way of allowing this appeal and pass suitable orders and render justice.

3. POINTS FOR CONSIDERATION:-

- i. Whether the Surcharge Order No.1365/2019/5a.Pa (SO 02/2020) dated 03.09.2021 passed by the 1st 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 by both sides.

POINT NO.1:-

5. Heard both and perused the relevant records. The present Civil Miscellaneous Appeal is preferred by the Appellants, who are the legal heirs of late Gopaldurai the President of the disputed Society, against the impugned Surcharge Order No.1365/2019/5a.Pa (SO 02/2020) dated 03.09.2021 passed by the 1st Respondent. On perusal of the records it reveals that the Appellants herein are the wife and son of late C.M.Gopaldurai who was the president of the

Respondent Society for the period of 2014 to 2017. Further 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. Hence a show cause notice was issued to the said Gopaldurai for the alleged loss to the Society to the tune of a sum of Rs.18,06,114/-. The said Gopaldurai also submitted a reply/explanation dated 01.12.2022. However an order of attachment was passed by the Respondent attaching the properties stand in the name of the said Gopaldurai.

6. Against which the said Gopaldurai preferred a Writ Petition in WP.No.19924 of 2020 before the Hon'ble High Court of Madras and status quo order was passed by the Hon'ble High Court vide order dated 23.12.2020. Despite status quo was ordered by the Hon'ble High Court subsequently a notice dated 06.05.2021 was issued to the said Gopaldurai for enquiry for the alleged loss to the said Society. However the said Gopaldurai died on 18.05.2021 due to Covid-19. Hence the 1st Appellate submitted a representation dated 05.07.2021 before the 1st Respondent intimating the death of the said Gopaldurai.

7. However without giving any opportunity to the Appellants herein the 1st

Respondent issued the impugned surcharge order dated 03.09.2021 against the dead person Gopaldurai and 3 others for a sum of Rs.16,46,009/-. Thereafter the Appellants have sent a representation dated 18.09.2021 with a request to furnish certain vital documents based on which the disputed Surcharge Order was passed and subsequently filed the present Civil Miscellaneous Appeal disputing the liability of the said Gopaldurai.

8. Pending the present Civil Miscellaneous Appeal, the 1st Respondent issued Form 6 notice in SO EP.1 of 2022 dated 29.08.2024 to the deceased Gopaldurai. Hence the Appellants herein issued a legal notice dated 09.09.2024 to the 1st Respondent and also informed about the pendency of the present Civil Miscellaneous Appeal. Despite the above the 1st Respondent issued Form 7 notice dated 08.01.2025 demanding a sum of Rs.14,76,347/- from the deceased person Gopaldurai and also issued an auction notice dated 30.01.2025 in Form 8 and Form 9 in EP.No.1 of 2022-23 under Rule 126 of the TN CS Rules 1988. Challenging the same the Appellants preferred a Writ Petition in WP.No.5219 of 2025 before the Hon'ble High Court of Madras. Vide order dated 18.08.2025 the Hon'ble High Court has set aside the Form 8 and Form 9 dated 30.01.2025 issued by the 1st Respondent against a dead person and disposed the Writ

Petition with direction to this Tribunal/Court to dispose the present Civil Miscellaneous Appeal within a period of three months from the date of receipt of copy of that order and further directed the Respondents not to take any coercive action against the legal heirs of the dead person till the disposal of the Statutory Appeal.

9. 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 husband of the 1st 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 3 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 for the reasons stated by them in the impugned order.

10. Disputing the impugned order the legal heirs of D1 preferred the present Civil Miscellaneous Appeal and D3 preferred CMA No.13 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.

11. 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 1st Respondent against D1 for the items Item 3(1) and Item 4(1) and Item 4(2) and Item 4(3) and Item 4(4) and Item 5(1) against D1 is liable to be dismissed or not.

12. At the outset the impugned order issued against a dead person is not tenable in the eye of law and is liable to be set aside. As narrated above the 1st

Respondent is having knowledge about the death of the first Defendant Gopaldurai and he also issued several communications upon the Appellants who are the legal heirs of the said Gopaldurai. Nevertheless, at the end of the enquiry without applying his mind the impugned order was issued by the 1st Respondent against a dead person. Therefore this court is of the considered view that, the impugned order per se is liable to be dismissed on the sole ground. Even assuming that, the impugned order is legally valid in the eye of law now it is to be seen as to whether it is sustainable under law in respect of D1. Hence let us discuss about the items against D1 mentioned in the impugned order in its seriatim.

13. Now coming to the first item 3(1) of the impugned order, it is the allegation of the 1st Respondent that, during the Audit of the Accounts of the Society for the year 2014-2017 the sale proceeds of Pesticide for the year 2014-2015 was not remitted to the Society's Account and hence both D1 as the President of the Society and D2 as the Secretary of the Society are liable to the loss to the Society to the tune of Rs.30,588/-.

14. Whereas it is the contention of the Appellants that, the first Respondent has

failed to consider that, the sale proceeds of Pesticide has to be remitted by the Secretary and not by the former President. At the time of enquiry under Sec.81 of TNCS Act, Enquiry Officer has given an observation that Sales Chitta, purchase bills and Liability Register of pesticides, were not produced by the Secretary. Further they would contend that, Secretary alone is a proper person to maintain the sales and purchase of the pesticide. So, merely signing in the Day book by the late President, is not a ground for fastening the liability against the President.

15. On a careful perusal of the impugned order, it is evident that, the enquiry Officer himself has vividly stated that, Sales Chitta, purchase bills and Liability Register of pesticides, were not produced by the Secretary D2 and further observed that, as per the bylaw, Cl.38, Secretary is alone liable to the all transactions of the pesticide. When that is the observation of the 1st Respondent it is for him to state on what basis liability was fixed upon the President also. No doubt as a President it is his duty to supervise the overall transactions of the Society. However that alone is not enough to fasten the liability on the President also. At the most the inaction of the President can be termed as his negligence. But that negligence alone cannot be taken into consideration for passing the

impugned Surcharge Order since the loss to the Society is to be compensated by the erring staff. And further it is not the case of the 1st Respondent that wantonly D1 has failed to supervise the transaction.

16. Further in page 12 of the impugned order the 1st Respondent himself has stated that, vide the explanation of D2 dated 13.08.2021, D2 has stated that, all the pesticides bags were taken by the President to his farm and hence the President is liable to pay for the loss. However there is no explanation on the part of the 1st Respondent as to whether any enquiry was conducted by him in respect of the allegation of D2 against D1 regarding taking of the pesticides bags to his Farm. From the impugned order itself it is evident that, no material is produced by D2 against D1 in respect of the above. Except alleging that the president has taken away the pesticide bags no single piece of evidence was produced by him to fasten the liability against D1.

17. Further it is also relevant to note that, though D2 alleges that, all the pesticide bags were taken by D1 to his Farm, nevertheless he has not mentioned as to how many bags D1 has taken and when it was taken by D1 and what is the worth of those of bags and why he failed to inform the same to his higher

Authority. Further D2 has not challenged the impugned order though he is facing criminal proceedings for his alleged misdeeds. Therefore, this court is of the considered view that making bald allegation against a dead person is not enough to fasten the liability upon D1 also for this item.

18. Now coming to the next Item 4(1); it is the allegation of the 1st Respondent that, as per the audit report false entries have been made for the periods 2014-2015 without any bills or vouchers and thereby caused loss to the Society to the tune of Rs.1,11,724/-. Hence it is the allegation of the 1st Respondent that, as President of the Society D1 is jointly liable to pay the Loss along with D2.

19. Per contra it is the contention of the Appellants that, the first Respondent ought to have seen that Charge No.4(1) is completely depends upon the Secretary of the Society, because, the allegation is without any voucher, expenses have been carried out by the Secretary in the Daybook. Actually, the so called expenses is true, and the Enquiry Offiucer has clearly admitted in the Enquiry Report. The Appellants would further contend that, D1 was relieved from his post on 19.07.2017 and after lapse of 2 years, an enquiry was conducted by the Enquiry Officer. So, the Secretary as well as Successor failed

to furnish all the documents to the Enquiry Officer. Again, at the time of enquiry before the first Respondent, Secretary himself admitted that, in respect of this item of the expenses he would pay the amount of Rs.55,000/- to the Society. So, at this juncture, the question of joint liability of the former President with the Secretary is unwarranted.

20. On a careful perusal of the impugned order it is admitted fact that, it is the Secretary D2 alone is a proper person to maintain the Society's account and he is liable to maintain proper records. And during the enquiry he himself stated that, as the entries made are true entries and records are available in the Society and no false entries were made in the book. And further he also agreed to pay a sum of Rs.55,000/- to the Society for Sl.No.10. Nevertheless joint liability is fixed upon the President. Though joint liability is fixed upon D1 however no basis is given as to how the President is also liable to pass the loss. Further the 1st Respondent has also not stated as to whether a sum of Rs.55,000/- was paid by D2 as agreed by him. Further it is admitted fact that, D1 was relieved on 19.07.2017 from the post of President much earlier. Then it is for the 1st Respondent to clarify as to whether the subsequent authorities produced those documents during enquiry or adduced any evidence against D1. Therefore, this

Court is of the considered view that, in the absence of material evidence against D1 no liability much less joint liability would be fastened against D1.

21. Now coming to the next Item 4(2); it is the allegation of the 1st Respondent that, by omitting to mention the correct amount collected on certain dates loss occurred to the Society to the tune of Rs.11,00,817.13 and the Secretary has failed to maintain the records colluding with the President D1 and hence D1 is jointly liable to pay along with D2 Secretary.

22. Refuting the above, it is the contention of the Appellants that, the first Respondent is totally misconceived the Charge No.4(2), since, this charge is pertaining to omission of Cash balance. They would further contend that, it is the Secretary who is the competent authority with regard to the Cash transaction and furthermore, Daybook is normally maintained by the Secretary. So, he is bound to carry out the day today transaction of the Society. On 09.03.2015, without any voucher, Secretary carried over the expenses a sum of Rs.9,92,210/-. On the other hand, Central Co-operative Bank of Anamalai and Coimbatore District Primary Agricultural Co-operative Credit Society Employees Union have given a confirmation Certificate with regard to the so

called amount. Obviously, on 31.03.2015, former President did not put his signature in the Daybook. The so called expense amount may be carried out during April 2015. Hence, first Respondent has to verify the audit period of 2015-2016 and then only first Respondent can come to conclusion in this regard.

23. On a careful analysis of the above and on careful reading of the impugned order it is evident that, the 1st Respondent has categorically stated that, it is the Secretary who is solely responsible for the day to day accounts of the Society and it is his bounden duty to maintain the correct Accounts of the Society and despite the above he has failed to make correct entries in the books and caused loss to the Society. Further it is also admitted fact that, D2 has also admitted to repay the amounts mentioned for items 1, 2, 3, 4, 6 and 7 under this item. However in the impugned order the 1st Respondent failed to mention as to whether they made any effort to recover the admitted portion of the amounts from D2. Though detailed enquiry was conducted however no material evidence is placed by them against D1 so as to fasten joint liability upon D1.

24. Now coming to Item 4(3); it is the allegation of the Respondents that, by

making false entries, D1 has caused loss to the Society to the tune of Rs.60,813.75.

25. Per contra it is the contention of the Appellants that, as far as the charge No.4(3) is concerned, first Respondent ought to have seen that the former President is not a proper authority to maintain Cash balance, because, as per the duties and responsibilities, Cash balance is under the control of Secretary. On 12.04.2016, the then Secretary was suspended by the Society and thereafter, as per the Resolution passed by the elected body, G.Kavitha, salesman was appointed as a Secretary (in-charge) and thereafter, she maintained the Daybook. Finally, one Balasubramaniam was transferred from the Singanallur Society to the second Respondent Society as Secretary. So, the above said persons are proper persons to speak about the alleged omission of Cash balance. But unfortunately, these persons were not examined by the Enquiry Officer.

26. On a close scrutiny of the above and the impugned order it is evident that, during his lifetime itself D1 has submitted in his reply dated 14.12.2020 that, alleging irregularities he suspended D2 and subsequently one Kavitha a salesman was placed in charge of Secretary and later one Balasubramaniam

was appointed as Secretary and had both of them were examined the real fact would come into picture. Despite the explanation submitted by D1 it appears that neither the said Kavitha nor the said Subramainam was examined in this aspect to find out the correct picture. Further as stated earlier it is the Secretary who is solely responsible for the day to day accounts of the Society and it is his bounden duty to maintain the correct Accounts of the Society and for his misdeeds he was suspended by the President D1. However the impugned order is silent as to why the liability was fixed on D1 alone and why D2 is not responsible for this item. Further it is for the 1st Respondent to explain as to whether any step was taken to peruse the records as claimed by the President to find out the correctness of the accounts. Further it is also admitted fact that, D2 is also facing criminal proceedings for his alleged misdeeds. No doubt though D1 is also responsible for the proper maintenance of the Society's Account; however, that alone is not enough to fasten the liability upon D1 in the absence of any material evidence to show that D1 has got any illegal benefit out of this item. Therefore, this court is of the considered view that, no liability can be fastened upon D1 for this item also.

27. Now coming to Item 4(4); it is the allegation of the 1st Respondent that,

“detail less expenditure” was shown in the records of the Society and hence the enquiry Officer has recommended to take action against D1 and hence D1 is liable to pay the loss to the Society to the tune of Rs.66,660/-.

28. Refuting the above the Appellants would contend that, the first Respondent has failed to consider that Charge No.4(4) is relating to the expenses (Detail Less Expenditure) of the Society, because, during the periodical audit of 2016-2017, an objection was raised by the Auditor that without any voucher the so called amount was carried out in the Daybook. They would further contend that, the entire records are under the custody of the Secretary and each and every entry of business transactions are to be carried over by the Secretary. However, Page No.27 of Sec 81 of the Enquiry Report, these expenses were scrutinized by the Enquiry Officer. But, unfortunately, the related documents of the Voucher were not perused by the Enquiry Officer. For an example, Payment of stamp paper and expenses of Computer operator etc. were not scrutinized by the Enquiry Officer.

29. Analyzing the above as narrated above it is the Secretary who is solely responsible for the day to day accounts of the Society and it is his bounden duty

to maintain the correct Accounts of the Society. However the impugned order is silent as to why the liability was fixed on D1 alone and why D2 is not responsible for this item. Further it is not the allegation of the 1st Respondent that by entering “detail less expenditure” in the accounts books D1 has enriched any amount illegally. Therefore this court is of the considered view that, the recommendation of the enquiry Officer alone is not enough to fasten the liability upon D1.

30. Now coming to the last Item 5(1); it is the allegation of the 1st Respondent that, both D1 and D2 has forged the signature of one Suseela member of the Society and misappropriated the Society’s amount to the tune of Rs.6,500/- and hence both D1 is jointly liable to pay the amount along with D2.

31. Whereas it is the contention of the Appellants that, M.Suseela is the wife of the Secretary and the Enquiry Officer has not obtained any statement from M.Suseela. Further the Secretary is alone has dealt with the Savings Account and hence if really a Voucher was fabricated, Secretary has to answer to M.Suseela.

32. There is a great force in the contention of the Appellants since in respect of

this item D2 has admitted during enquiry that, the relevant voucher is missing and he would obtain the voucher and remit the same to the Society. Therefore when D2 himself has admitted that, the relevant voucher is found missing and he would obtain a new one then it is for the 1st Respondent to explain as to why joint liability was fixed upon D1 also. Further without any material evidence the 1st Respondent has alleged that D1 has misappropriated the said amount. Therefore this court is of the considered view that, in the absence of any material evidence no joint liability could be fastened against D1.

34. To sum up even assuming that, as President of the Society it is his duty to supervise the overall day to day affairs of the Society; however Sec.87 of the Surcharge Proceedings does not arise against the former President, for his alleged negligence. Since normally Surcharge Proceedings would be initiated for actionable wrong either by commission or omission in a deliberate and reprehensible manner, with reckless callousness and a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man, under those existing circumstances. Therefore in the absence of any material evidence it is not possible to hold D1 is jointly or severally liable to pay the loss caused to the Society when D2 is facing the criminal proceedings.

35. On perusal of the impugned order, no categorical findings have been recorded by the Respondent to establish that the negligence on the part of D1 was willful or deliberate or with a view to cause loss to the Society in this regard. Nowhere, a finding has been rendered by the Respondent that, D1 is guilty of willful negligence and wantonness nor it has been recorded that omission or commission on the part of D1 are deliberate reckless or callous or loss has been caused deliberately to the assets of the Society. Therefore, in the absence of such a finding, it has been consistently held by our Hon'ble High Court that the surcharge proceedings initiated against any individual is liable to be set aside. For issuing surcharge proceedings there should be a definite finding that the loss was caused due to wilful negligence of the concerned employee.

36. The above said view of this Court is well supported by the judgment of our Hon'ble High Court reported in 2013 (4) MLJ 352 in the case between Deputy Registrar of Co-Operatives Kumbakonam, Thanjavur District Vs R.Krishnamoorthy; and in the judgment reported in 2017 (4) LW 425 in the case between M.Anbalagan Vs Enquiry Officer, Office of the Co-Operative Deputy Registrar, Musiri and others. Therefore when the requirements of Sec.87 is not been satisfied which warrants initiation of surcharge proceedings D1 cannot be fastened with the liability. Therefore the Impugned Surcharge Order No.Na.Ka.No.1365/2019/SaBa S.C.02/2020/Sa Ba dated 03.09.2021 is not

sustainable in the eye of law and is hereby set aside. Hence point No.1 is answered in favour of the Appellants.

POINT NO.2:- To what other relief?

37. Therefore taking into consideration of all the above, this Court is of the considered view that the Appellants are 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 deceased C.M.Gopaldurai (D1) 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 17th day of March 2026.

PRINCIPAL DISTRICT JUDGE,
COIMBATORE.

DRAFT/FAIR JUDGMENT
CMA (CS) No.15/2022
DATED : 15-03-2026
PDJ, CBE.