

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

**Present Tmt.V.R.Latha, M.A, B.L.,
Principal District Judge, Krishnagiri.**

Thursday, the 09th day of April 2026

C.M.A(C.S) No:19/2012

[CNR.NO.TNKI01-000055-2012]

1. K.S.Aagajan [**Died**] Appellant/2nd Defendant
2. Irfan [*]
3. Imran [*]
4. Ibrahim [*]
5. Salman [*]
6. Shakila Banu [*]
[*] [**Amended as per order in I.A.No.1/2023 dated 23.04.2024**]

... Appellants / LR's of 1st Appellant

..Vs..

1. The Deputy Registrar of Coop Societies,
Krishnagiri [Full Additional In charge]
2. The Special Officer,
S.310 Ekkoor Primary Agricultural
Co-operative Bank Limited,
Ekkoor, Uthangarai Taluk. Respondents/Plaintiffs
3. N.Dhandapani
4. N.Govindaraj (**Died :01.08.2010**)(*) Respondents / Defendants 1 and 3

Having aggrieved on the surcharge decree passed against the petitioner herein on 08.02.2010 on the file of the Deputy Registrar of Co-Operative societies this appeal is preferred, U/s 152 of the Tamil Nadu Co-Operative Societies Act, on the ground that the decree and Judgment passed by Deputy Registrar is erroneous under law and prayed to set aside the decree and order.

This Appeal is coming on 09.07.2025 for final hearing before this Court in the presence of Thiru.T.M.Gowrisankar, Counsel for the Appellants and Thiru.A.Dhandapani, Government Pleader for the respondents No.1 and 2 and Tr.K.B.Gopalakannan, Counsel for the 3rd respondent, and the 4th respondent died. After hearing both sides arguments, perusing the averments, and other connected records, and having stood over for consideration till this day, this Court passes the following:

Judgment

The Appellants humbly prayed, that this court may be pleased to allow this appeal and setaside the Surcharge proceedings dated 08.02.2010 passed in Surcharge Case No.2/2009 Sa.Pa.1 on the file of the Deputy Registrar of Co-operative Societies, Krishnagiri (1st respondent) and to dismiss the Surcharge proceedings without cost and thus render justice.

2] The second respondent herein has filed the Surcharge proceedings against the appellants and 3 and 4 respondents under Surcharge Case No.2/2009 Sa.Pa.1 before the 1st respondent Deputy Registrar of Co-operative Societies. Without following the provisions laid down under section 87 of Tamil Nadu Co-operative Societies Act, without giving proper opportunity to the appellant and 3 and 4 respondents, to defend their side, has passed an award of Surcharge proceedings for Rs.10,16,206.70 against the appellant and 3 and 4 respondents. Having constrained by the illegal order of Surcharge Award passed by 1st

respondent on 08.02.2010 under Surcharge No.2/2009 Sa.Pa.1 this appellant and 3 and 4 respondents have filed 3 separate writ petitions before the Hon'ble High Court of Madras in W.P.No.11613/2010. The Hon'ble High Court has passed a common judgment on 23.08.2011 by way of directing that there is no possibility to file an appeal under (CMA (CS) and dismissed the writ petitions. While dismissing that writ petitions the Hon'ble High Court has instructed the appellants who passed the common judgment on 23.08.2012. When there is a opportunity available to file an appeal under CMA(CS) instead of availing that opportunity by way of invoking section 152, They should not approach the appellate forum. On that basis The Hon'ble High Court of Madras dismissed the prayer of the petitioners who approached the constitutional bench to issue writ of certiorari.

3] The Hon'ble High Court while passing the order has stated that the appellants have approached under section 87 of the Tamil Nadu Cooperative Act 1983 and when these petitions were taken for consideration it is found that the proceeding under section 87 of the act for appeal is provided under section 152 of the act. Instead of invoking such provision which is an alternative remedy of appeal against the order passed under section 87 of act without availing the alternative remedy they have straightaway approached for writ proceeding cannot be entertained and the Hon'ble High Court has dismissed those writ petitions.

4] The above named appellant humbly begs to prefer Civil Miscellaneous Appeal under Section 152 of the Tamil Nadu Co-operative Societies Act, against the decree and Judgment dated 08.02.2010, passed in Surcharge case No.2/2009 Sa.Pa.1 on the file of the Deputy Registrar of Co-operative Societies at Krishnagiri District.

5] Gist of the Case:

Without following the provisions laid down under section 87 of Tamil Nadu Cooperative Societies Act, since the appellant approached the Hon'ble High Court to quash under section 81 of the Tamil Nadu Cooperative Societies Act 1983 dated 09.10.2002 by the 2nd respondent and quash the same since the appellants failed to invoke section 152 of the act provides for alternative remedy of appeal has against the impugned proceedings initiated under section 87 of the act. Since the petitioners failed to invoke the alternative remedy, have straightaway comes to the court by way of writ petitions against the proceedings initiated under section 87 of the act. Which cannot be entertained by the Hon'ble High Court.

6] Grounds of Appeal:

il The surcharge order passed by the Deputy Registrar of Co-operative Societies (1st respondent herein) is false, arbitrary, ill-motivated, contrary to law, and opposed to the facts and probabilities of the case. The first respondent has erred in passing a one-sided award without granting proper opportunity to the

appellant. The surcharge complaint and the proceedings conducted by the 1st and 2nd respondents are in violation of the principles of natural justice. The first respondent has failed to note that the provisions of Section 81(1) of the Tamil Nadu Co-operative Societies Act have not been followed, in the absence of any reference to a statutory enquiry, inspection, or audit, to arrive at a conclusion regarding the alleged misappropriation of funds.

ii] The first respondent has further failed to note that even according to the domestic enquiry and its findings, the allegations of misappropriation against the appellant have not been proved by the 2nd respondent. In fact, as per the second proviso to Section 87(1) of the Tamil Nadu Co-operative Societies Act, the proceedings initiated on 20.06.1994 ought to have been disposed of by the 1st respondent within 7 years, i.e., on or before 20.06.2001. However, the surcharge proceedings culminated in an award only on 08.02.2010, which is highly belated and liable to be rejected.

iii] The 1st and 2nd respondents are not following the procedures to prove the alleged misappropriation of the appellant. Who is not provided in the domestic enquiry and also not proved in the statement of enquiry report. Only on assumptions and presumptions the 1st respondent is wholly opposed to law and which is untenable that award is totally opposed to law.

iv] No opportunity given to pursue the alleged the documents. The appellant requested to provide the following documents:

1. Copy of the case ledger of the Bank for the period from 01.04.1993 to 31.10.1996.
2. Copy of the cash bills and vouchers from 01.04.1993 to 31.01.1996
3. Copies of the registers relating to the jewel pledging apprising Register and the Stock ledger.
4. The cheque book, Savings Account, and jewel loan ledger copies of the 2nd respondent Bank.
5. The resolution book from the year 1992 to 1996
6. Cash Chitta for the period from 01.04.1993 to 30.01.1996 etc. But the 1st respondent has failed to produce the same.

v] Even after the passing of the award, the appellant has requested the 1st respondent, to furnish the copies of the documents by the application dated 31.01.2011 under the provision of right to information act. However, by reply dated 28.02.2011, the 1st respondent stated that those documents were not available in his office. Thus, without perusing the relevant and vital records, the 1st respondent has passed the illegal surcharge order on mere assumptions. The 1st respondent has also failed to note that the 2nd respondent has not produced any documentary evidence in support of the alleged surcharge complaint. The 1st respondent has further failed to consider that, under the enquiry report under Section 81, the loss was estimated at Rs.3,50,000/-, whereas in the statement

dated 30.07.1994 it was stated as Rs.5,00,000/-, and in the plaint it was claimed as Rs.14,00,000/-. These contradictory statements were not taken into account by the 1st respondent. In respect of Item No.II relating to the jewel loan of Rs.62,500/-, there is no recorded evidence.

vi] The 1st respondent passed the award on 08.02.2010, and the same was served on 17.05.2010. Though the appeal ought to have been filed within 60 days from the date of receipt of the order copy, the appellant, instead of filing the appeal, approached the Hon'ble High Court by filing W.P. No.11613 of 2013. By order dated 23.08.2012, the Hon'ble High Court directed the appellant to file an appeal and dismissed the writ petition. Hence, as per Section 14 of the Limitation Act, the present appeal is within time. It is further submitted that, during the pendency of the revision petition in C.R.P. No.3537 of 2022 and C.M.P. No. 18829 of 2022 on the file of the Hon'ble High Court of Judicature, the 1st appellant died on 14.09.2020, and the appellants 2 to 6 were recognized as his legal heirs. The 6th appellant is his wife, and appellants 2 to 5 are his sons, who have succeeded to the estate of the deceased 1st appellant.

7] Argument adduced on the side of Appellants.

i] The arguments that was adduced on the side of the appellants is that the 2nd respondent herein has filed this surcharge proceedings against the predeceased 1st appellant and 3rd and 4th respondents under surcharge case No.2/2009 Sa.Pa.1 before the 1st respondent i.e The Deputy Registrar of

Co-operative Societies. Without the following the provisions laid down under section 87 of Tamil Nadu Co-operative societies act and without giving proper opportunity to the predeceased 1st appellant and 3 and 4 respondents to defend their side, has passed an award of surcharge for Rs.10,16,206.70 against the appellant and 3 and 4 respondents.

ii] It is further submitted against the illegal order of surcharge award passed by 1st respondent on 08.02.2010 in surcharge No.2/2009 Sa.Pa.1 this predeceased 1st appellant and 3 and 4 respondents have filed 3 separate writ petitions before the Hon'ble High Court of Madras in W.P.No.11613/2010 and others.

iii] It is further submitted that the Hon'ble High Court has passed a common Judgment on 23.08.2012 and directed that, the appellants without availing the appeal procedure by way of invoking section 152 they should not approach the Hon'ble High Court when suitable provisions available with them under section 152 instead of invoking that opportunity approaching the apex court is wrong procedure and dismissed the appeal preferred by them and dismissed those writ petitions. The copies of Judgment in the writ petition is delivered on 18.01.2012 and hence, the appellant is constrained to file this appeal against the surcharge award dated on 08.02.2010 passed in surcharge case No.2/2009 Sa.Pa.1. It is further submitted that the surcharge complaint and proceedings conducted by the 1st and 2nd respondents are in violation of the

principles of natural justice is the claim of the appellants.

iv] It is further submitted that the first respondent has failed to note that even according to the domestic enquiry and findings the allegations has not been proved about the alleged misappropriation done by the appellant. It is further submitted that in fact, as per the second provision of section 87(1) of Tamil Nadu Co-operative Societies Act, the proceedings on 20.06.1994, should have been disposed off by the 1st respondent within a year i.e on or before 20.06.1995 so that this surcharge proceedings and award passed on 08.02.2010 is highly belated and to be rejected.

v] It is further submitted that the first respondent has failed to follow the procedure laid down under section 87 of the Tamil Nadu Co-operative Societies Act and contrary to law has passed the surcharge award to it is not maintainable. It is further submitted that the 1st and 2nd respondents are wrong is not following the procedure to prove the alleged misappropriations of the appellant, is not proved in the domestic enquiry and not proved in the statement of enquiry report at all.

vi] It is further submitted that it's only on assumption and presumption the 1st respondent has passed the impugned surcharge award. It is further submitted that the impugned award passed by the 1st respondent is totally opposed to law and it is untenable. It is further submitted that in fact the document in respect of the alleged dealing stated by the 2nd respondent are not

produced before the 1st respondent and not even given an opportunity to the predeceased 1st appellant to peruse the documents in respect of the case.

vii] It is further submitted that the appellant humbly submits that he has requested the 1st respondent to provide the copy of the following documents:

(1) Copy of the case ledger of the bank for 01.04.1993 to 31.10.1996.

(2) Copy of the Cash bills vouchers from 01.04.1993 to 31.01.1996.

(3) Copy of the registers in respect of the Jewel pleadings apprising register and the stock ledger.

(4) The Cheque book, savings account and jewel loan ledger copies of the 2nd respondent bank.

(5) The resolution book from the year 1992 to 1996.

(6) Cash chitta for the period from 01.04.1993 to 30.01.1996 etc. But the 1st respondent has failed to produce the same.

viii] It is further submitted that even after the passing of awards this appellant has requested the 1st respondent, to furnish the copies of the documents by the application dated 31.01.2011 under the provision of Right to information act. But by his reply dated 28.02.2011 the 1st respondent stated that no such documents are available at there office. Thus without perusing the important records, the 1st respondent has passed the impugned surcharge order imaginarily.

ix] It is further submitted that the 1st respondent has failed to note that the 2nd respondent has not produced any kind of documentary evidence in respect of

the alleged surcharge complaint and to prove their stand. It is further submitted that the 1st respondent has failed to see that under the enquiry report under section 81 they estimated the loss at Rs.3,50,000/- but on their statement dated 30.07.1994 it is Rs.5 lakhs but in the plaint it is Rs.14 lakhs and plus. The controversial statement is not taken into account by 1st respondent.

x] It is further submitted that the 1st respondent filed a memo regarding a sum of Rs.56,69,264 is to be paid only by 1st appellant and 3rd respondent, but no documentary evidence to prove that 1st appellant and 3rd respondent have done it, haven't been submitted so far before this honourable court. It is further submitted without any proper documentary evidence and without a proper enquiry it can't be decided based on the assumptions of 1st and 2nd respondent. It is further submitted that relevant citations have been filed and enclosed with the list of authorities. It is further submitted that therefore the appellants humbly prays that this court may be pleased to allow this appeal and set aside the surcharge case dated 08.02.2010 passed in surcharge case No.2/2009 Sa.Pa.1 on the file of the Deputy Registrar of Co-operative Societies, Krishnagiri (1st respondent) and to dismiss the surcharge case with throughout cost of the appellant and render justice.

8] Whether this Civil Miscellaneous Appeal is to be allowed or not is the point for consideration.

i] The order passed by the predecessor of this Court on 19.12.2016 in Miscellaneous Civil Appeal (Co-operative Society) Case No.19/2012 is found to

be erroneous. Hence, the matter was remanded back to this Court with a direction to set aside the said order and to pass a fresh order in accordance with law. It has been stated in the order passed by the Court which had earlier dealt with the matter that the alleged surcharge irregularities had occurred during a particular period, and that proceedings under section 87 of the Tamil Nadu Co- operatives Societies Act ought to have been initiated within a period of 7 years from the said period. Since such action was not taken within the said time, it was held that the proceedings are barred by limitation.

ii] However, this Court is of the considered view that such a conclusion is not correct and is contrary to the facts of the case. In the present case, surcharge proceedings were initiated against one Thandapani and K.S. Aagajan, who was a former official / Co-operative Sub-Registrar. Since the said K.S. Aagajan had died, his legal heirs, namely Irfan, Imran, Ibrahim, Salman and Shakila Banu, have been brought on record as his legal representatives. It is seen that, according to the enquiry officer, the alleged irregularities had occurred during the period between 07.04.1998 and 01.03.1999, and the surcharge proceedings were initiated on 29.07.2006. On that basis, the respondents contended that the proceedings were initiated beyond the period of 7 years and hence barred by limitation, which contention was accepted by the court. Aggrieved by the same, the present appeal has been preferred. During the course of hearing, it is brought to the notice of this Court that the respondents had earlier filed a Writ Petition in

W.P.No.33446 of 2007 before the Hon'ble High Court of Madras on 15.10.2007, which came to be disposed of on 23.08.2012. In the said order, the Hon'ble High Court has clearly held that an effective alternative remedy is available to the respondents under Section 152 of the Tamil Nadu Co-operative Societies Act, and that, without availing such remedy, they ought not to have approached the High Court by way of a writ petition. Accordingly, the said writ petition was dismissed. It is clear that, even though an effective appeal remedy was available under law, the respondents did not use that remedy. Instead, they filed a writ petition before the Hon'ble High Court and continued those proceedings for nearly five years, thereby caused delay in the matter. Therefore, it is presumed that the respondents were aware that they could file an appeal before the competent authority itself. Instead of that to delay the process wantonly they preferred the writ before the Hon'ble High Court and delayed the process as far as possible to them. In the view of this Court, it is evident that the respondents allowed the matter to remain pending and later attempted to take advantage of the delay by raising the ground of limitation and contended that there is a delay in taking disciplinary proceedings against them after a lapse of 7 years which is barred by limitation and therefore, executing authorities cannot initiate any disciplinary proceedings against them which was also considered and allowed in earlier proceeding passed on 08.02.2010.

Against that surcharge order these three appellants preferred writ petition

and prolonged it for 5 years to their convenience and when the matter was taken in writ proceedings The Hon'ble High Court has directed that the remedy available to them is not under writ proceedings but to file an appeal before the appellate authority under the provision 152 of the Tamil Nadu Cooperative Societies Act. In that proceeding the appellants raised a plea already 7 years lapsed and therefore this court has no jurisdiction to entertain this case and prayed to dismiss the suit which was also considered by the then court against which the Deputy Registrar of Cooperative Society and Special Officer S.310 Ekkoor Primary Agricultural Cooperative Bank Limited, Uthangarai Taluk, Krishnagiri District preferred Civil Revision Petition filed under article 227 of the constitution of India seeking to set aside the order dated 19.12.2016 made in C.M.A(CS).No.19 of 2012 on the file of Tribunal for Co-operative cases.

Further, since the writ petition was pending for several years, the authorities were waiting for the decision of the Hon'ble High Court and could not proceed with the matter during that period. Only after the writ petition was disposed of, further action was taken. Therefore, this Court is of the view that the finding of the predecessor of this Court that no action can be taken against the respondents on the ground that 7 years have elapsed is not correct and cannot be sustained.

9] In support of the above contention, the Hon'ble High Court of Madras has held as follows:

Learned counse for the petitiioenr reiterated that as per the Judgment of this court, in the case of C.Kanagajothi Vs. The Registrar of Cooperative societies, Kilpauk, Chennai reported in (CDJ 2019 MHC 2083), the time limit prescribed in the Act is directory and not mandatory and therefore, the surcharge proceedings initiated under section 87 of the act cannot be quashed merely on the ground of non-comliance of the time limit prescribed. The relevant portion of the order reads as under:

This court is of the considered opinion that the time limit prescribed under the statute is only directory and not mandatory. The said legal position was clarified by the Hon'ble Division Bench of this court in the case of S.V.K.Sahasraman Vs. The Deputy Registrar of co-operative societies in W.A.No.949 of 2008.

The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at...

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with

the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

“When a public duty is imposed and the statute requires that it shall be performed in a certain manner; or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative”.

The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the statute must be looked at. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature.

Generally speaking the provisions of a statute creating public

duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty.

In view of the fact that the time limit prescribed under the Act for concluding the surcharge proceedings is only directory, the surcharge notice cannot be quashed on this ground. However, it is duty mandatory on the part of the authorities to ensure all such proceedings are concluded within a reasonable period for time. The observations made in this Judgment that the time limit is directory can never be misconstrued by the authorities competent, so as to prolong and protract the surcharge proceedings. The Rule is to conclude the proceedings as per the time limit prescribed under the statute. Only in exceptional circumstances, where it is not possible to conclude the proceedings on account of the genuine administrative reasons, then the authorities may take some additional time for the purpose of concluding the proceedings and not otherwise.

The above judgment was delivered relying on the judgment of the Division Bench of this court, holding that the time limit contemplated

is for completion of investigation, which is directory and not mandatory. The prescription of time limit cannot affect the principles of justice and in the present case, the financial allegations is running to several lakhs. Public interest is to be protected and merely on the ground of time limit, frauds cannot be allowed to escape from the clutches of proceedings.

10] Therefore, in the light of the above discussion and the settled legal position laid down by the Hon'ble High Court of Madras, this Court finds that the contention of the respondents that the surcharge proceedings are barred by limitation cannot be accepted. This Court is of the considered view that the time limit prescribed under the Tamil Nadu Co-operative Societies Act for initiating and completing surcharge proceedings is only directory in nature and not mandatory.

11] Hence, merely on the ground of delay, the surcharge proceedings cannot be set aside, for the reason The disciplinary proceedings authorities wantonly not delayed the process but the respondents only preferred writ petition before the Hon'ble High Court and delayed the process for 5 years. Since the writ was pending before the Hon'ble High Court the enquiry officers are not able to proceed against them. Only after 5 years direction was given to approach the appellate forum under the provision of 152 The Tamil Nadu

Cooperative Societies Act. There the appellant forum decide the case in favour of the appellants by way of stating that already 7 years got lapsed therefore the appellants are not liable to be furnished. But on perusing the Judgment IN THE HIGH COURT OF JUDICATURE AT MADRS IN CRP.No.3537/2022 and CMP No.829/2022. It is clearly mentioned,

“ In view of the fact that the time limit prescribed under the Act for concluding the surcharge proceedings is only directory, the surcharge notice cannot be quashed on this ground. However, it is duty mandatory on the part of the authorities to ensure all such proceedings are concluded within a reasonable period for time. The observations made in this Judgment that the time limit is directory can never be misconstrued by the authorities competent, so as to prolong and protract the surcharge proceedings. The Rule is to conclude the proceedings as per the time limit prescribed under the statute. Only in exceptional circumstances, where it is not possible to conclude the proceedings on account of the genuine administrative reasons, then the authorities may take some additional time for the purpose of concluding the proceedings and not otherwise.”

12] Further, it is seen that the allegations in the present case relate to financial irregularities involving substantial amounts. Therefore, such serious allegations cannot be ignored on technical grounds. Public interest also requires that such allegations involving financial loss are properly examined and appropriate action is taken in accordance with law. It is also evident that the respondents had earlier approached the Hon'ble High Court and pursued writ proceedings for several years without availing the statutory remedy of appeal. Hence, they cannot now take advantage of the delay and seek to avoid the surcharge proceedings. Accordingly, this Court finds that the order passed by the predecessor of this Court setting aside the surcharge proceedings on the ground of limitation is not correct. On the other hand, this Court holds that the surcharge order passed by the Deputy Registrar of Co-operative Societies, Krishnagiri in Surcharge Case No.2/2009 Sa.Pa.1 dated 08.02.2010 is valid and is hereby confirmed.

In the result this appeal is dismissed. The Surcharge order passed by the Deputy Registrar of Co-operative Societies Krishnagiri, in Surcharge case No:2/2009 SA PA-I dated 08.02.2010 is hereby confirmed. No cost.

This Judgment is dictated to the Stenographer, directly typed by him in computer, corrected and pronounced by me in the open Court on this, the 09th day of April, 2026.

Principal District Judge,
Krishnagiri.