

In the Court of the Principal District Judge, Madurai
Present: Thiru. S. Sivakadatcham, B.Sc., M.L.,
Principal District Judge, Madurai

Wednesday, this the 20th day of September, 2023

I.A.No.1/2023 in C.M.A.(CS) No.6/2022

R.J.Gangatharan

...Petitioner/Appellant/

/vs/

1. The Deputy Registrar of Cooperative Societies/Suo motu Surcharge Officer, Madurai Circle, Madurai.
2. S. Madhalaiappan
3. K.Pandi
4. M.Jegadeeswaran
5. K.Paramanantham
6. G.Laxmi
7. M.Vijayalaxmi
8. S.Lohanayagi
9. T.Palanikumar
10. B.Balasubramaniam
11. N.K.Alagarsamy
12. E.Manivel
13. B.Mariyappan
14. S.Velusamy
15. R.Devi
16. P.K.Selvaraj
17. S.Mohan
18. The Administrative Officer,
No.A3101, Madurai Milk Project Employees
Cooperative Thrift and Credit Society Ltd.,
Avin Complex, Sathamangalam
Madurai 625 020

...Respondents/Respondents

This petition coming on 12.09.2023 for hearing before me in the presence of
Thiru A.Shahul Hameed, Advocate for the petitioner and of Thiru V.Ezhilarasan,

Government Pleader for the 1st respondent and of Thiru A.Sankaranarayanan, Advocate for the 2nd respondent and of Thiru R.Thirugnana Sambandam, Advocate for the respondents 3, 5, 9 and 10 and of Thiru R.Selvamani, Advocate for the 4th respondent and of Thiru G. Ghanthichinnaiah, Advocate for the respondents 6, 7, 8, 11, 12, 14, 15, 16 and 17 and of Thiru D.Shanmuga Raja Sethupathi, Advocate for the 13th respondent and of Thiru P.Sureshkumar, Advocate for the 18th respondent and upon hearing both sides and having stood over for consideration till this day, this court delivered the following:-

ORDER

The petitioner has filed this petition under section 151 of CPC to order the C.M.A.Nos.30/2021, 31/2021, 33/2021, 34/2021, 35/2021, 36/2021, 37/2021, 38/2021, 39/2021, 40/2021, 42/2021, 45/2021, 47/2021, 48/2021 and 54/2021 jointly together with C.M.A.No.6/2022 for disposal.

2. The averments in the affidavit filed along with petition are briefly as follows:-

The petitioner is the petitioner in C.M.A.No.6/2022. The petitioner is the Assistant Secretary of the 1st respondent and he was placed under suspension from 19.07.2019 for irregularities said to have been committed by board of directors and employees of the society. Surcharge proceedings was initiated against the petitioner and the respondents 2 to 17, who committed the same irregularities, for a total misappropriated amount of Rs.7,92,41,676/-. The enquiry officer did not properly conduct the enquiry. All the respondents 2 to 17 have filed their respective appeals. The petitioner has filed the main appeal CMA No.6/2022. All the CMA are jointly

to be heard. The petitioner obtained order in W.P.(MD) No.23396/2019 for disposal of his appeal within 6 months. Hence, the petitioner has filed this petition for joint hearing all appeals. The respondent cannot have any valid objection. Hence, this petition.

3. The averments in the counter affidavit filed by the 1st respondent are briefly as follows:-

The petition filed by the petitioner seeking the relief of joint trial of several appeal filed by several persons against the surcharge order in Tha.Va.No.14/2019-2020 dated 18.02.2021 is not maintainable. The prayer of the petitioner is vexatious and untenable. The petitioner and other respondents are office bearers of the society in question. In the surcharge order, the charges against the petitioners and other respondent are totally varied from one and another. There is no chance to conduct joint trial. The order passed in W.P.(MD) No.23396/2019 by the Hon'ble Madurai Bench of Madras High Court is regarding this main appeal in CMA(CS) No.6/2022 only filed by the petitioner. The prayer of the petitioner is to be rejected. So, this petition is liable to be dismissed.

4. The averments in the counter affidavit filed by the 2nd respondent are briefly as follows:-

This respondent has denied the averments made in the petition. This petition is not maintainable either under law or on facts. The concerned A.3101 Madurai Milk Project Employees Cooperative Thrift and Credit Society, Madurai has been added as 18th respondent. The petitioner is the sole person of the society. Due resolutions have been passed by the Special Officer and the resolutions have been

implemented by the Board also. The petitioner has challenged the surcharge order in WP(MD) No.23306/2019 on the file of the Hon'ble Madurai Bench of Madras High Court, wherein the Hon'ble High Court has directed to dispose the C.M.A. (CS) No.6/2022. Prior to filing of the appeal filed by the petitioner, the other respondents have preferred CMA(CS) No.30/2021. So, it could not be possible to the petitioner to demand that all appeal are to be clubbed up in one manner is not correct. The petitioner ought to have impleaded this respondent and other respondents in WP(MD) No.23306/19. So, the maintainability of the petition is to be decided at first instance. The petitioner has filed this petition without mentioning any provisions of law and on this ground also this petition is to be dismissed. In such circumstances, without any valid reasons the petitioner has filed this vexatious petition. So, the petition may be dismissed.

5. The averments in the counter affidavit filed by the 3rd respondent are briefly as follows:-

The petitioner filed this petition for joint trial all CMAs filed by the 16 other respondents with CMA(CS) No.6/2022 filed by this petitioner alleging that all the respondents 2 to 17 are charged with the same irregularities. The 1st respondent passed the impugned order in SC No.14/2019-20 dated 18.02.2021 holding the respondents 2 to 17 herein jointly and severally liable for a total financial loss of Rs.7,92,41,676/-. The 1st respondent's order accusing this respondent as committed misappropriation of funds along with 3 employees of the society is totally wrong. This respondent signed only the deposit receipts and he was not at all involved in the process of closure and payment of deposit accounts. The petitioner is the

Assistant Secretary and was assigned with the duty and responsibility of handling the receipts and payments of deposits of members. The petitioner has challenged the surcharge order in WP(MD) No.23306/2019 on the file of the Hon'ble Madurai Bench of Madras High Court, wherein the Hon'ble High Court has directed to dispose the C.M.A.(CS) No.6/2022 within 6 months and did not have any reference to joint trial. At the time of filing CMA (CS) No.6/2022 the petitioner must have knowledge about the other CMAs filed by other respondent and he did not choose for direction of joint trial. CMA(CS) No.6/2022 is directed to be disposed within 6 months and the deadline almost over, if joint trial is ordered, sufficient opportunity and time may not be given to the 3rd respondent to defend the case. Though this respondent is jointly and severally liable for the irregularities committed by the petitioner, the nature of responsibilities differ. In such circumstances, without any valid reasons the petitioner has filed this vexatious petition. So, the petition may be dismissed.

6. The averments in the counter affidavit filed by the 4th respondent are briefly as follows:-

This respondent has denied the averments made in the petition. This petition is not maintainable either under law or on facts. The concerned A.3101 Madurai Milk Project Employees Cooperative Thrift and Credit Society, Madurai has been added as 18th respondent. The petitioner is the sole person of the society. Due resolutions have been passed by the Special Officer and the resolutions have been implemented by the Board also. The petitioner has challenged the surcharge order in WP(MD) No.23306/2019 on the file of the Hon'ble Madurai Bench of Madras

High Court, wherein the Hon'ble High Court has directed to dispose the C.M.A. (CS) No.6/2022. Prior to filing of the appeal filed by the petitioner, the other respondents have preferred CMA(CS) No.30/2021. So, it could not be possible to the petitioner to demand that all appeal are to be clubbed up in one manner is not correct. The petitioner ought to have impleaded this respondent and other respondents in WP(MD) No.23306/19. So, the maintainability of the petition is to be decided at first instance. The petitioner has filed this petition without mentioning any provisions of law and on this ground also this petition is to be dismissed. In such circumstances, without any valid reasons the petitioner has filed this vexatious petition. So, the petition may be dismissed.

7. The averments in the counter affidavit filed by the 5th respondent are briefly as follows:-

This respondent was elected as the Director of the 18th respondent society and function from 06.12.2015 to 08.05.2018 and subsequently as Vice President from 11.08.2018 in the society. The 1st respondent passed the impugned order in SC No.14/2019-20 dated 18.02.2021 holding the respondents 2 to 17 herein jointly and severally liable for a total financial loss of Rs.7,92,41,676/-. The petitioner filed this petition for joint trial of all the separate CMAs filed by the respondents with CMA No.6/2022 filed by the petitioner. The 1st respondent's order accusing this respondent and 8 Directors and 4 ex.Directors for wilful negligence whereas the Secretary, Asst.Secretary, the clerk and the President of the 2nd respondent society have been committed misappropriation of funds. The petitioner is the Assistant Secretary and was assigned with the duty and responsibility of handling the receipts

and payments of deposits of members. The petitioner has challenged the surcharge order in WP(MD) No.23306/2019 on the file of the Hon'ble Madurai Bench of Madras High Court, wherein the Hon'ble High Court has directed to dispose the C.M.A.(CS) No.6/2022 within 6 months and did not have any reference to joint trial. At the time of filing CMA (CS) No.6/2022 the petitioner must have knowledge about the other CMAs filed by other respondent and he did not choose for direction of joint trial. CMA(CS) No.6/2022 is directed to be disposed within 6 months and the deadline almost over, if joint trial is ordered, sufficient opportunity and time may not be given to the 3rd respondent to defend the case. Though this respondent is jointly and severally liable for the irregularities committed by the petitioner, the nature of responsibilities differ. In such circumstances, without any valid reasons the petitioner has filed this vexatious petition. So, the petition may be dismissed.

8. The averments in the counter affidavit filed by the respondents 9 and 10 are briefly as follows:-

These respondents were elected as the Director of the 18th respondent society and functioned from 11.08.2018 only. The 1st respondent passed the impugned order in SC No.14/2019-20 dated 18.02.2021 holding the respondents 2 to 17 herein jointly and severally liable for a total financial loss of Rs.7,92,41,676/-. The petitioner filed this petition for joint trial of all the separate CMAs filed by the respondents with CMA No.6/2022 filed by the petitioner. The 1st respondent's order accusing these respondents and other Directors and 4 ex.Directors for wilful negligence whereas the Secretary, Asst.Secretary, the clerk and the President of the

2nd respondent society have been committed misappropriation of funds. The petitioner is the Assistant Secretary and was assigned with the duty and responsibility of handling the receipts and payments of deposits of members. The petitioner has challenged the surcharge order in WP(MD) No.23306/2019 on the file of the Hon'ble Madurai Bench of Madras High Court, wherein the Hon'ble High Court has directed to dispose the C.M.A.(CS) No.6/2022 within 6 months and did not have any reference to joint trial. At the time of filing CMA (CS) No.6/2022 the petitioner must have knowledge about the other CMAs filed by other respondent and he did not choose for direction of joint trial. CMA(CS) No.6/2022 is directed to be disposed within 6 months and the deadline almost over, if joint trial is ordered, sufficient opportunity and time may not be given to the 3rd respondent to defend the case. Though this respondent is jointly and severally liable for the irregularities committed by the petitioner, the nature of responsibilities differ. In such circumstances, without any valid reasons the petitioner has filed this vexatious petition. So, the petition may be dismissed.

9. The averments in the counter affidavit filed by the 12th respondent adopted by the respondents 6, 7, 8, 11, 14, 15, 16 and 17 are briefly as follows:-

This respondent has denied the averments made in the petition. This 12th respondent is excutive committee member of the A.3101 Madurai Milk Project Employees Cooperative Thrift and Credit Society, Madurai. The surcharge proceedings was initiated against the board member alleging that they had not legally administered the society and thereby charged only willfull negligence, whereas the charge alleged against the petitioner is misappropriation of society

funds. This respondent preferred CMA (CS) No.38/2021 against the surcharge order in respect of his charge is concerned. The petitioner has challenged the surcharge order in WP(MD) No.23306/2019 on the file of the Hon'ble Madurai Bench of Madras High Court, wherein the Hon'ble High Court has directed only to dispose the C.M.A.(CS) No.6/2022 within the stipulated time. The Hon'ble High Court has not directed to dispose of other CMAs filed by the other respondents within the stipulated time. Further, the petitioner has not impleaded other respondents in W.P.(MD) No.23306/2019 and has not sought for joint trial. Now, the petitioner filed petition in I.A.No.1/2023 in CMA No.6/2022 for clubbing the appeals by the petitioner is pending for orders, which is not maintainable in law. The petitioner has filed this petition with an afterthought to drag the proceedings. If the other CMAs are ordered for joint trial with the CMA (CS) No.6/2022, it will get delayed and the direction of the Hon'ble High Court could not be executed. In such circumstances, without any valid reasons the petitioner has filed this vexatious petition to reopen the case for the purpose of producing certain documents. Only to drag on the proceedings, the petitioner has filed this petition. So, the petition may be dismissed.

10. The counsel for the respondents 13 and 18 has endorsed as 'no counter'.

11. The point for determination:

Whether this petition is allowable or not?

12. Both side has not adduced oral evidence. On the petitioner side, Ex.P.1 to Ex.P.3 were marked. On the side of the respondents no exhibit was marked. Heard both sides.

13. Point:

The learned petitioner's counsel advanced arguments that as per surcharge proceedings the petitioner along with other respondents 2 to 17 are jointly and severally liable to pay the amount. So, all the CMAs filed by the other respondents 2 to 17 are also tried along with CMA (CS) No.6/2022 filed by this petitioner. It is further contended that the respondents 2 to 17 have also moved bail applications jointly with the petitioner and obtained bail. The copies of the bail orders are marked as Ex.P.1 and Ex.P.2. So, there will be chance of passing conflict of judgments in the CMAs if tried separately. So, this petition may be allowed.

14. On the other hand, the learned respondents' counsel except the respondent 13 and 18 have strongly opposed this petition. The counsel for the respondents have vehemently argued that the petitioner was the Assistant Secretary of the A.3101 Madurai Milk Project Employees Cooperative Thrift and Credit Society, Madurai. In the surcharge proceedings the petitioner and other employees are fixed liability on the ground of misappropriation whereas other respondents are fixed liability on the ground of negligence, so, the facts are differs. It is also further contended that the petitioner has preferred appeal against the surcharge proceedings in CMA (CS) No.6/2022 and at the time of filing this petition did not seek any prayer to try the case along with other CMAs. It is further contended that while

petitioner filed W.P.(MD) No.23396/2019, the petitioner has not impleaded the other respondents in that writ petition, though the petitioner was well aware about the pendency of CMAs filed by the respondents 2 to 17. It is further contended that the petitioner has filed this petition to drag on the proceedings and also contended that that as per order passed in W.P.(MD) No.23396/2019, the Hon'ble Madurai Bench of Madras High Court has directed this court to dispose of C.M.A.(CS) No.6/2022 only, if it is ordered to try along with other CMAs, it will be delayed. Hence, this petition may be dismissed.

15. Records perused. The petitioner and other respondents 2 to 17 were employees, Directors & Board members and former Directors & Board members of A.3101 Madurai Milk Project Employees Cooperative Thrift and Credit Society Ltd., Madurai, in which the petitioner and the respondents 3 to 5, 9 and 10 were Directors and Board Members. It is stated that the surcharge proceedings was initiated against the respondent petitioner and the respondents 2 to 17 and finally the enquiry officer passed order in S.C.No.14/2019-20 dated 18.02.2021 holding that the respondents 2 to 17 herein were jointly and severally liable for the total alleged financial loss of Rs.7,92,41,676/-. Being aggrieved the respondents 2 to 17 have preferred appeal in C.M.A.Nos.30/2021, 31/2021, 33/2021, 34/2021, 35/2021, 36/2021, 37/2021, 38/2021, 39/2021, 40/2021, 42/2021, 45/2021, 47/2021, 48/2021 and 54/2021. The present petition has also preferred appeal in C.M.A.(CS) No.6/2022. In the mean time, some of the properties of the petitioner were attached, so the petitioner herein preferred W.P.(MD) No.23396/2019 and W.M.P.(MD) No.20050/2019 before the Hon'ble Madurai Bench of Madras High Court, in which

the Hon'ble Madurai Bench of Madras High Court passed order dated 12.12.2022 directing this court to dispose of the C.M.A.(CS) No.6/2022 on merits in accordance with law within a period of six months from the date of receipt of a copy of the order. This court received the copy of order on 23.02.2023 and posted the CMA (CS) No.6/2022 for enquiry. At this stage, the petitioner has filed this petition to try the CMA (CS) No.6/2022 along with the above mentioned CMAs(CS) filed by other respondents 2 to 17 on the ground that in the surcharge proceedings the petitioner along with the respondents 2 to 17 were liable to pay the financial loss of Rs.7,92,41,676/- jointly and severally and also contended that the petitioner along with other respondents moved bail application in which order was passed. So, to avoid conflict of judgments the petitioner wants to try jointly all the CMAs filed by the petitioner and the other respondents. On perusal of copy of order passed in W.P. (MD) No.23396/2019, the Hon'ble Madurai Bench of Madras High Court directed this court to dispose the C.M.A.(CS) No.6/2022 within six months from the date of receipt of the copy of order as well as the 1st respondent the Deputy Registrar of Cooperative Societies, Madurai to dispose the petition on merits and in accordance with law within a period of six months from the date of receipt of copy of order. So, as per direction of the Hon'ble Madurai Bench of Madras High Court, the C.M.A.(CS) No.6/2022 has to be independently disposed of within six months. The learned petitioner's counsel contended that the surcharge proceedings in S.C.No.14/2019-20 dated 18.02.2021 the petitioner along with other respondents 2 to 17 were held liable to pay jointly and severally the financial loss of Rs.7,92,41,676/- and so, all the CMAs have to be tried jointly. As rightly pointed by the counsel for the respondents 2 to 12, 14 to 17 in

the CMAs filed by the other respondents, the petitioner is not at all a party to the proceedings. Likewise in the CMA(CS) No.6/2022, though the petitioner has impleaded all the respondents 1 to 18, he has not impleaded them in W.P.(MD) No.2336/2019, though he was well aware about the pendency of the CMAs filed by the other respondents 2 to 17. Further more, it is contended on respondent side that in the surcharge proceedings some of respondents are fixed liability on the ground of wilful negligence, but the Secretary, Asst. Secretary, the clerk and the President of 18th respondent were fixed liability on the ground of misappropriation of funds. The petitioner in his affidavit simply says that in the surcharge proceedings the petitioner along with other respondents 2 to 17 are fixed liability jointly and severally and also while filing bail applications along with other respondents he filed bail application and obtained bail order and so he wants joint trial of all CMAs, without that no other valid ground advanced by the petitioner for joint trial. It is also contended by the respondents that the petitioner was well aware about the pendency of the CMAs filed by the other respondents, in spite of that he did not implead them in W.P.(MD) No.23396/2019. Furthermore, as rightly pointed out by the respondents' counsel, in W.P.(MD) No.23396/2019 the Hon'ble Madurai Bench of Madras High Court directed this court to dispose of C.M.A.(CS) No.6/2022 within a period of six months, if it is clubbed with other CMAs the direction of the Hon'ble High court cannot be executed in time. It is further argued on respondents' side that in some other CMAs, the records were also not called for, if they are ordered to be tried jointly it will protract proceedings. Furthermore, since the Hon'ble Madurai Bench of Madras High Court directed this court only to dispose of C.M.A.(CS) No.6/2022

within six months, it is not appropriate to try jointly with other cases. Furthermore, all the CMAs(CS) as mentioned above in the petition were filed in the year 2021. The petitioner kept silent all along without filing any petition to pray all the CMAs to be tried jointly. Only as per direction of the Hon'ble Madurai Bench of Madras High court the petitioner's C.M.A.(CS) No.6/2022 is ripe for disposal and posted for arguments, the petitioner has filed this petition to try his case in C.M.A.(CS) No.6/2022 along with other CMAs filed by other respondent would show only to protract the proceedings the petitioner filed this petition as rightly pointed out by the learned respondents' counsel. Hence, this petition is devoid of merits and this court is not inclined to allow this petition and finally this petition shall be dismissed.

16. In the result, this petition is dismissed. No cost.

Dictated to the stenographer, transcribed and computerized by him, corrected and pronounced by me in open court this the 20th day of September, 2023.

Principal District Judge,
Madurai.

Petitioner side Witness – Nil**Petitioner side documents**

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| Ex.P.1 | 25.08.2020 | Photocopy of order passed in Crl.M.P.Nos.3764/2020, 3534/2020 and 3433/2020 on the file of the Principal District Court, Madurai. |
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| Ex.P.2 | 05.11.2020 | Photocopy of order passed in Crl.O.P.(MD) Nos.10061 and 10062/2020 on the file of the Hon'ble Madurai Bench of Madras High Court. |
| Ex.P.3 | 03.02.2021 | Photocopy of order passed in Crl.M.P(MD) No.635/2021 in Crl.O.P.(MD) Nos.10061/2020 on the file of the Hon'ble Madurai Bench of Madras High Court. |
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Respondents side Witness – Nil**Respondents side documents:- Nil**

Principal District Judge,
Madurai