

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THANJAVUR.

PRESENT : ***Thiru.K.Poorana Jeya Anand, M.A., M.L.,***
Principal District Judge, Thanjavur.

Friday, the 30th day of August, 2024.
(Thiruvalluvarandu 2055 Sri Kurothi Varudam Aavani Thingal 14th day)

I.A.No.102/2023 in CMA(CS) No.26/2023

Suresh ... Petitioner / Appellant

versus

1) The Deputy Registrar of Cooperative
Societies, Pattukkottai Region.

2) The Regional Joint Registrar of

Cooperative Societies, Thanjavur.

... Respondents / Respondents

This Interlocutory Application has come up for final hearing before me on 27.08.2024 and upon hearing the arguments of Mr.V.Subramaniam, Learned Advocate appearing for the Petitioner and of Mr.R.Shanmugasundaram, Learned Advocate appearing for the Respondents and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

1) The petitioner filed this petition under section 152(6) of the Tamil Nadu Cooperative Societies Act praying to suspend the Surcharge Order passed u/s 87 of the Tamil Nadu Cooperative Societies Act by The Deputy Registrar of Cooperative Societies, Pattukkottai Region in Na.Ka.No.1214/2019-Sa.Pa dated 17.08.2023 directing the petitioner / appellant to pay a sum of Rs.28,43,027/- with interest at the rate of 14% per annum jointly and severally till the disposal of the main appeal.

2) **The case of the petitioner is that** the petitioner herein is the appellant and he preferred an appeal against the Surcharge order passed by the 1st respondent u/s 87 of the Tamil Nadu Cooperative Societies Act in Na.Ka.No.1214/2019 dated 17.08.2023. In the year 2013 the petitioner was elected as a member of the Pattukkottai Town Cooperative Society and then he elected as a President of the said society and retired from the service in the year 2018. During that period the petitioner did not commit any misdeeds as alleged by the 1st respondent. After retired from service, since the bank officials committed by way of misdeeds of willful negligence in respect of brought into auction of jewels of the borrowers and for fixing the upset price less than the market value, on behalf of them the 1st respondent issued Surcharge Order against the petitioner herein along with five other persons. The above said order is not maintainable in law, since the petitioner is not a paid Officer as per Sec.73 of the Tamil Nadu Cooperative Societies Act, 30/1983. As per Sec.75(3) of Tamil Nadu Cooperative Societies, Act, the President of the Society cannot be treated as an employee of the society and he is under the head of “non-official”. As per Sec.84 of the TNCS Act, the Chief Executive Officer of the Society alone responsible for maintaining the societies debit and credit account. The Executive Director, General Manager and Manager of the society alone responsible for taking action in respect of default in payment of jewel loan by the borrowers and for which, take immediate steps for auction proceedings who committed default in repaying the loan amount within a prescribed period and so, the petitioner is not in any way responsible for the misdeeds committed by the other officials of the society.

Without giving sufficient opportunities to the petitioner, the 1st respondent passed the Surcharge order against the petitioner along with five other persons and the same is not acceptable in law. Hence, the petitioner filed this petition to suspend the Surcharge Order passed by the 1st respondent.

3) **On the other hand**, the respondents have strongly objected by filing memo of objections and stated that after passing of Surcharge order u/s 87 of the Tamil Nadu Cooperative Societies Act against the petitioner and other persons, the dispute was referred to Arbitrator u/s 90 of Tamil Nadu Cooperative Societies Act for its settlement. During the reference of the dispute to the Arbitrator, an order can be passed u/s 187 of the Tamil Nadu Cooperative Societies Act as if it is a move passed under Order 38 Rule 5 CPC and as such, the respondents issued a notice in A.R.C.No.1/2024-2025 and in C.E.P.No.1/2024-2025 calling upon the petitioner to furnish security towards the amount arrived u/s 187 of TNCS Act and so, the petition filed by the petitioner has no merits. Hence, pleaded to dismiss the petition.

4) On the side of the petitioner, marked two documents as Ex.P1 & Ex.P2. Ex.P1 is the copy of notice issued U/s 167 of the Tamil Nadu Cooperative Societies Act 1983 by the 1st respondent to the petitioner. Ex.P2 is the copy of Conditional attachment order passed by the 1st respondent against the petitioner herein.

5) Point that arises for consideration in this Petition is that
Whether this petition is to be allowed as prayed for?

Point :

6) Heard both sides and perused the records.

7) On careful perusal of the averments put forth on either side, it reveals that the petitioner preferred an appeal against the Surcharge order passed by the 1st respondent u/s 87 of the Tamil Nadu Cooperative Societies Act in Na.Ka.No.1214/2019 dated 17.08.2023 against him and other five persons on the ground of willful negligence in respect of brought into auction of jewels of the borrowers and for fixing the upset price less than the market value and since the petitioner is not a paid Officer as per Sec.73 of the Tamil Nadu Cooperative Societies Act, 30/1983, the above said order is not maintainable in law and to prove his case, notice u/s 167 of TNCS Act, 1983 and the Conditional attachment order issued to him were marked as Ex.P1 & Ex.P2.

8) Per contra, on the side of the respondents vehemently contended that after passing of Surcharge order the dispute was referred to Arbitrator for its settlement and during that time, the respondents issued a notice in A.R.C.No.1/2024-2025 and in C.E.P.No.1/2024-2025 calling upon the petitioner to furnish security towards the amount arrived u/s 187 of TNCS Act and since there is no merits in the petition, the petition is liable to be dismissed.

9) On careful perusal of the counter filed by the respondents, it reveals that the respondents are taking action against the petitioner / appellant and in such circumstance, this appellate court has to decide that whether the petitioner / appellant is a paid officer or not? as per Sec.73 of the Tamil Nadu Cooperative Societies Act, 30/1983 and also to decide that whether the petitioner / appellant is not liable to pay the surcharge amount as per Sec.75(3) of the Tamil Nadu Cooperative Societies Act

and also to decide that whether the Chief Executive Officer of the respondents society alone is responsible u/s 84 of the Tamil Nadu Cooperative Societies Act in this appeal.

10) Considering the above said facts and circumstances, the petitioner / appellant has established the prima facie case and the balance of convenience is also in favour of him. Considering the entire available records, this court is of the view that the Surcharge Order passed u/s 87 of the Tamil Nadu Cooperative Societies Act is to be suspended till the disposal of the main appeal in respect of the petitioner and thus, the point is answered accordingly.

11) In the result, this petition is allowed as prayed for. The Surcharge Order passed u/s 87 of the Tamil Nadu Cooperative Societies Act by The Deputy Registrar of Cooperative Societies, Pattukkottai Region in Na.Ka.No.1214/2019-Sa.Pa dated 17.08.2023 is suspended in respect of the petitioner till the disposal of the main appeal. No costs.

This Order is dictated to the *Stenographer Grade-I* of this court, transcribed by her in Computer, corrected and pronounced by me in open Court, this the 30th day of August, 2024.

Principal District Judge,
Thanjavur.

Petitioner's side Exhibits:

- Ex.P1 24.06.2024 Copy of Notice issued U/s 67 of the Tamil Nadu Cooperative Societies Act, 1983 by the Deputy Registrar of cooperative Societies, Pattukkottai to the petitioner.
- Ex.P2 19.07.2024 Copy of Conditional Attachment Order of the Deputy Registrar of Cooperative Societies, Pattukkottai.

Respondents' side Exhibits : None.

PDJ

Draft / Fair Copy of Order in
I.A.No.102/2023 in CS CMA 26/2023
PDJ Court, Thanjavur.
D.O.O. 30.08.2024.