

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 1ST DAY OF SEPTEMBER 2022 / 10 TH BHADRA,
1944

RP NO. 431 OF 2022

AGAINST THE JUDGMENT DATED 1199 OF 2020 IN WA 1199/2020

OF HIGH COURT OF KERALA

REVIEW PETITIONER/RESPONDENT NO.1 IN W.A:

CHARLEY PANTHALLOOKARAN,
AGED 65 YEARS, S/O. KUNJU VAREETH,
PANTHALLOOKARAN HOUSE, KURIACHIRA POST,
THRISSUR DISTRICT, PIN CODE - 680006.

BY ADVS.

GEORGE POONTHOTTAM (SR.) (K/000570/1979)
NISHA GEORGE
REGINALD VALSALAN

RESPONDENTS/APPELLANTS & RESPONDENTS 2 TO 4:

- 1 THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, OFFICE OF THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, THRISSUR - 680 003.
- 2 THE INQUIRY OFFICER (UNDER SECTION 68 (1) OF THE KCS ACT), ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES (GENERAL)/VALUATION OFFICER, THE THRISSUR PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK, THRISSUR - 680003.
- 3 THE KURIACHIRA SERVICE CO-OPERATIVE BANK LIMITED NO. 637, HEAD OFFICE, KURIACHIRA, THRISSUR DISTRICT, PIN CODE - 680 006, REPRESENTED BY ITS SECRETARY.

R.P. No.431 of 2022
in
W.A.No.1199 of 2020

-: 2 :-

- 4 P.R. SUNNY,
AGED 66 YEARS, S/O. P.K. RAPPAI,
PUTHUKATTUKARAN HOUSE, SANTHOSH STREET,
KURIACHIRA, THRISSUR - 680006.
- 5 ROBY P.B,
AGED 43 YEARS, S/O. BABY, PALIYEKKARA HOUSE,
CONVENT ROAD, CHIYYARAM, THRISSUR - 680026.
ADV. VENUGOPAL.M.R
ADV.DHANYA P.ASHOKAN
ADV.T.K.VIPINDAS SR.GP

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
01.09.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

R.P. No.431 of 2022
in
W.A.No.1199 of 2020

-: 3 :-

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

R.P. No.431 of 2022

in

W.A.No.1199 of 2020

Dated this the 1st day of September, 2022.

ORDER

P.B.Suresh Kumar, J.

The first respondent in the writ appeal, who was the petitioner in the writ petition, seeks review of the judgment. Parties are referred to in this order for convenience, as they appear in the writ petition.

2. The petitioner is a member of the second respondent, a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (the Act). He was also the President of the Society for some time. The petitioner and others were surcharged by the first respondent, the Joint

R.P. No.431 of 2022
in
W.A.No.1199 of 2020

-: 4 :-

Registrar of Co-operative societies, under Section 68(2) of the Act in terms of Ext.P1 order on the ground that they have caused loss to the Society to the tune of Rs.3,15,269/- by taking out a building on lease unnecessarily, and without the permission of the competent authority under the Act. Earlier, based on an inquiry report of the Vigilance Officer appointed under Section 68A, an inquiry was ordered by the Joint Registrar under Section 68(1) through the second respondent, the concerned Assistant Registrar of Co-operative Societies, and it is based on the report in the said inquiry that Ext.P1 order was passed.

3. The petitioner challenged Ext.P1 order mainly on the ground that there cannot be an inquiry under Section 68(1) based on the report of the Vigilance Officer appointed under Section 68A. It was also contended, in the alternative, that the report of the Vigilance Officer under Section 68A was drawn up by an Officer in the rank of Deputy Superintendent of Police, whereas the provisions of Section 68A of the Act clearly

R.P. No.431 of 2022
in
W.A.No.1199 of 2020

-: 5 :-

mandate that the enquiry officer could not be below the rank of the Deputy Inspector General of Police. The learned Single Judge accepted the main ground that there cannot be an inquiry under Section 68(1) based on the report of the Vigilance Officer appointed under Section 68A, and quashed Ext.P1 order. The writ appeal was filed by respondents 1 and 2 aggrieved by the said decision of the learned Single Judge. Insofar as the learned Single Judge did not consider the alternative contention urged by the petitioner to impugn Ext.P1 order, respondents 1 and 2 canvassed only the correctness of the finding rendered by the learned Single Judge on the main ground urged. This court accepted the arguments of respondents 1 and 2, set aside the impugned judgment and dismissed the writ petition.

4. Though the petitioner preferred S.L.P. No.4308 of 2022 aggrieved by the decision in the writ appeal, the same was withdrawn later with liberty to prefer a petition seeking review of the judgment and this review petition is accordingly instituted.

5. Heard the learned Senior Counsel for the petitioner/review petitioner.

6. The learned Senior Counsel for the petitioner vehemently and persuasively argued that this Court ought to have considered the alternative contention raised by the petitioner in the writ petition viz, that the report under Section 68A was drawn up by an incompetent officer also, before upsetting the judgment of the learned Single Judge. According to the learned Senior Counsel, it is an error apparent on the face of the record, and the judgment in the writ appeal is liable to be reviewed on that score.

7. We have considered the argument advanced by the learned Senior Counsel for the petitioner.

8. Rule 22 of Order 41 of the Code of Civil Procedure, the principles of which are applicable to an appeal under Section 5 of the High Court Act, 1958 provides that any respondent in an appeal, though he may not have appealed from any part of the decree, may not only support the decree

R.P. No.431 of 2022
in
W.A.No.1199 of 2020

-: 7 :-

but may also state that the finding against him in the judgment impugned in respect of any issue ought to have been in his favour. In the case on hand, no finding was rendered by the learned Single Judge on the alternative plea urged by the petitioner. Even assuming that the said provision would apply to a case of the instant nature, the learned Senior Counsel who appeared for the petitioner did not urge at the time of hearing of the appeal that in the event of the court accepting the arguments of respondents 1 and 2 as to the sustainability of the ground on which the writ petition was allowed, the petitioner is entitled to sustain the judgment on the alternative plea raised in the writ petition. This fact is not disputed. A respondent in an appeal may or may not avail the benefit of the provision contained in Rule 22 of Order 41 of the Code of Civil Procedure, and going by the plain meaning of the words used in the provision, if a respondent in an appeal does not choose to avail the benefit of Rule 22 of Order 41, it is not obligatory for the court to examine the correctness of the finding rendered

R.P. No.431 of 2022
in
W.A.No.1199 of 2020

-: 8 :-

against him in the impugned judgment. In other words, a contention of this nature which was available to a respondent at the time of hearing of the appeal ought to have been raised by him at that very instance itself. As such, according to us, it cannot be said that non-consideration of such a contention which was not raised by the party, is a ground to seek review of the judgment.

The review petition, in the circumstances, is without merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

YKB

R.P. No.431 of 2022
in
W.A.No.1199 of 2020

-: 9 :-

APPENDIX

PETITIONER ANNEXURES

Annexure I TRUE COPY OF THE SPECIAL LEAVE PETITION
NO. 4308 OF 2022, FILED BY THE
PETITIONER BEFORE THE HON'BLE SUPREME
COURT, WITHOUT ANNEXURES.

Annexure II TRUE COPY OF THE ORDER IN SPECIAL LEAVE
TO APPEAL (C) NO. 4308 OF 2022 DATED
07.02.2022 PASSED BY THE HONOURABLE
SUPREME COURT.