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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.667 OF 2009

Smt. Pratibha Praful Vhanale
Age: 40 years, Occu: Agriculture,
R/o. At post Rui, Tal. Hatkanagle,
Dist. Kolhapur. ..Petitioner.

V/s.

1. Ichalkaranji Mahila Sahakari Bank Ltd., Ichalkaranji, Ward No.18/489, Ichalkaranji Industrial Estate, Plot No.77, Shahu Putala, Ichalkaranji, Tal. Hatkanagale, Dist. Kolhapur.

2. Grievance Redressal Officer, Ichalkaranji Mahila Sahakari Bank Ltd. Ichalkaranji Ward No. 18/489, Ichalkaranji Industrial Estate, Plot No.77, Shahu Putala, Ichalkaranji, Tal. Hatkangale, Dist. Kolhapur.

3. The State of Maharashtra, through Department of Co-operation Textile, Mantralaya, Mumbai.

4. Reserve Bank of India, Urban Banks Department, Central Office, 1st floor, Garment House, Worli, Mumbai – 400 018.

5. Union of India,

6. District Deputy Registrar, Kolhapur. ..Respondents.

Mr.Amit B.Borkar for the petitioner.
Mr.V.S.Gokhale, AGP for respondent No.3.
Mr.Kinshuk Kislaya i/b. M/s. Udwadia and Udeshi for respondent No.4.
Mr.Amol P. Mhatre for respondent Nos.1 and 2.
Mrs.Shehnaz Bharucha for respondent no.5.

CORAM : A.S.OKA AND V.L.ACHLIYA, JJ.

DATED : 3RD SEPTEMBER, 2015

JUDGMENT (PER V.L.ACHLIYA, J.)

1. Rule. Rule made returnable forthwith. By consent heard finally.

2. The petitioner herein has filed this petition under Article 226 of the Constitution of India challenging the order dated 2nd August, 2008 passed by the second respondent thereby refusing to entertain the claim of the petitioner for debt relief / waiver of loan under the Agricultural Debt Waiver and Debt Relief Scheme, 2008.

3. Briefly stated, the petitioner obtained a loan of Rs.3,50,000/- from respondent No.1 bank on 20th February, 2003 and the same was overdue on 31st December, 2007. In the year 2008, the Union of India floated a loan waiver / debt

relief scheme known as Agricultural Debt Waiver and Debt Relief Scheme, 2008 (for short 'the said scheme'). According to the petitioner, she is a 'small farmer' within the meaning of 3.6 of the said scheme. Respondent No.1 is a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and same falls within the meaning of 'co-operative credit institution' as defined in clause 3.4 of the said scheme. According to the petitioner, loan which was advanced to her falls in the category of 'investment loan' and the case of the petitioner was duly covered under clause 4.1(b) of the said scheme for grant of debt relief. However, the name of the petitioner was not included in the list of farmers eligible to receive the benefit of the said scheme. Therefore, the petitioner submitted an application in form of representation before respondent No.2 Grievance Redressal Officer. However, the representation application dated 22nd July, 2008 made by the petitioner came to be rejected by respondent No.2 vide decision dated 2nd August, 2008. Being aggrieved by the said decision, the petitioner has preferred this writ petition.

4. We have heard learned counsel representing

petitioner as well as respondents and perused the record and proceedings, more particularly the deft relief scheme of 2008 framed by the Union of India.

5. Mr.Borkar, the learned counsel for the petitioner strenuously contended that the case of the petitioner for debt relief squarely clearly falls within the scope of the said scheme, as the petitioner is covered by the category of a person defined as a 'small farmer' in clause 3.6 of the said scheme. The learned counsel invited our attention to the term 'investment loan' defined under clause 3.3 of the said scheme and contended that as the loan was obtained by the petitioner as a small farmer for the purpose of carrying out agricultural activity, the name of petitioner ought to have been included in the list of eligible person entitled to waiver of loan / debt relief under the said scheme.

6. On the other hand, the learned counsel appearing for the respondents have argued that the petitioner was not entitled to avail the benefit under the said scheme. It is contended that the petitioner has secured loan for the activity which is not covered under the said scheme as the petitioner

has secured the loan and used the amount for the purpose of release of mortgaged agricultural land.

7. The fact is not in dispute that the petitioner has secured a loan of Rs.3,50,000/- on 20th February, 2003 from respondent No.1 bank and the same was to be repayable within 84 months. In the application made for securing the loan, the petitioner has shown the purpose of loan as agricultural development. The loan was secured on execution of various documents which includes mortgage of land, letter of authority, etc. in favour of respondent No.1.

8. As per the guidelines laid down for implementation of said scheme of 2008, the scope of the scheme appears to cover direct agricultural loan extended to 'marginal farmers' and 'small farmers' and 'other farmers' advanced by the scheduled commercial banks, regional rural banks, co-operative credit institutions and local areas banks. The meaning of the word 'direct agricultural loans' has been defined in clause 3.1 of the said scheme, which reads as under :-

"3.1. 'Direct Agricultural Loans' means Short Term

Production Loans and Investment Loans provided directly to farmers for agricultural purposes. This would also include such loans provided directly to groups of individual farmers (for example Self Help Groups and Joint Liability Groups), provided banks maintain disaggregated data of the loan extended to each farmer belonging to that group."

Clause 3.3 of the said scheme defines the meaning of word 'investment loan' as referred in clause 3.1, which reads thus:-

"3.3. 'Investment Loan' means

(a) investment credit for direct agricultural activities extended for meeting outlays relating to the replacement and maintenance of wasting assets and for capital investment designed to increase the output from the land, e.g. deepening of wells, sinking of new wells, installation of pump sets, purchase of tractor / pair of bullocks, land development and term loan for traditional and non-traditional plantations and horticulture; and

(b) investment credit for allied activities extended for acquiring assets in respect of activities allied to agriculture e.g. dairy, poultry farming, goatery, sheep rearing, piggery, fisheries, bee-keeping, green houses and biogas."

Clause 3.5, 3.6 and 3.7 of the scheme provides the meaning of words 'marginal farmer', 'small farmer' and 'other farmer' which read as under :-

> *"3.5. 'Marginal Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land up to 1 hectare (2.5 acres).*
>
> *3.6. 'Small Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 1 hectare and up to 2 hectares (5 acres).*
>
> *3.7 'Other Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 2 hectares (more than 5 acres). "*

Further the explanation No.3 to above referred clauses provides as under :-

> *"Explanation:*
>
> *3. In the case of a farmer who has obtained investment credit for allied activities where the principal loan amount does not exceed Rs.50,000, he would be classified as "small and marginal farmer" and, where the principal amount exceeds Rs.50,000, he would be classified as 'other farmer', irrespective in both cases of the size of the land*

holding, if any.”

9. Clause 4 of the said scheme provides for the “amount eligible” for debt waiver / debt relief and clause 4.1 (b) of the said scheme specifically deals with debt waiver / debt relief in case of 'investment loan', which reads as under:-

> *“4.1 The amount eligible for debt waiver or debt relief, as the case may be (hereinafter referre to as the 'eligible amount'), shall comprise of:*
>
> *(b) in the case of an investment loan, the installments of such loan that are over due (together with applicable interest on such installments) if the loan was:*
>
> *(i) disbursed up to March 31, 2007 and overdue as on December 31, 2007 and remaining unpaid until February 29, 2008;*
>
> *(ii) restructured and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government; and*
>
> *(iii) restructured and rescheduled in the normal course up to March 31, 2007 as per applicable RBI guidelines on account of natural calamities.*
>
> *Explanation: In the case of an investment loan disbursed up to March 31, 2007 and classified as non-*

performing asset or suit filed account, only the installments that were overdue as on December 31, 2007 shall be the eligible amount. "

10. Clause 4.2 of the said scheme deals with loan not included in the eligible amount, which reads thus:-

"4.2 The following loans shall not be included in the eligible amount:

a) advances against pledge or hypothecation of agricultural produce other than standing crop; and

(b) agricultural finance to corporates, partnership firms, societies other than cooperative credit institutions (referred to in para 3.4), and any similar institution."

Clause 5.1 of the said scheme provides that in the case of small or marginal farmer the entire 'eligible amount' shall be waived.

Clause 6.1 of the scheme provides for Debt relief to be provided to category of farmers classified as "other farmers". The said provision reads as under:-

> *“6.1. In the case of ‘other farmers’, there will be a one time settlement (OTS) Scheme under which the farmer will be given a rebate of 25 per cent of the ‘eligible amount’ subject to the condition that the farmer pays the balance of 75 per cent of the ‘eligible amount’;*
>
> *Provided that in the case of revenue districts listed in Annex-I, ‘other farmers’ will be given OTS rebate of 25 per cent of the ‘eligible amount’ or Rs.20,000**,** whichever is higher, subject to the condition that the farmer pays the balance of the ‘eligible amount’. ”*

11. We have carefully considered the submissions advanced in the light of the said scheme of 2008 and more particularly clauses of the scheme as discussed above. Although there is no dispute as to the fact that the petitioner falls in the category of 'small farmer' but taking into consideration the quantum of loan as Rs.3,50,000/-, in the light of explanation No.3 as referred above, the petitioner deserves to be classified as 'other farmers'. Although the petitioner has contended that she has acquired the loan for development of agricultural land, but the documents on record contradicts the case of the petitioner. The documents placed on record clearly reflects that the petitioner had mortgaged the land and house property and also executed

letter of authority in favour of respondent No.1 bank. In the letter of authority, the purpose of loan has been shown as long term cash credit facility to the tune of Rs.3,50,000/-. In the deed of mortgage executed by the petitioner on 20th February, 2003, it is mentioned that the petitioner has obtained the loan for making payment of dues on account of agricultural land and the amount will be utilized for the said purpose. The grievance made by the petitioner vide letter dated 2nd August, 2008 was duly considered by respondent No.2. It is mentioned in the communication dated 2nd August, 2008 that pursuant to the complaint / representation dated 22nd July, 2008, respondent No.1 bank as well as the auditors of the bank duly scrutinised the documents executed by way of security to the loan which includes the documents showing opening of the loan account and on due consideration of the record, it was found that the loan was secured for the purpose of release of mortgaged land.

12. Thus, on consideration of the reason assigned by respondent No.2 for rejecting the representation of the petitioner, we are of the view that the petitioner has failed to make out any case to establish that the loan secured by the

petitioner was an investment loan and duly covered by said scheme. The loan secured by the petitioner for repayment of loan and release of mortgaged agricultural land certainly not falls within the ambit of 'investment loan' defined under clause 3.1 of the said scheme as referred in the foregoing paras. Clause 4.2 of the said scheme clearly provides that advances against pledge or hypothetication of agricultural produce other than standing crop are not included in the eligible amount for waiver of loan.

13. Thus, considering the overall facts of case, we are of the view that the decision of respondent No.1 to deny the benefit of loan waiver / debt relief scheme of 2008 to the petitioner and the decision rendered by respondent No.2 which is impugned in this petition, cannot said to be illegal, arbitrary and perverse so as to interfere in exercise of writ jurisdiction under Article 226 of the Constitution of India. We are, therefore, inclined to dismiss the petition. Accordingly, the petition is dismissed with no order as to costs. Rule stands discharged.

(V.L.ACHLIYA, J.) **(A.S.OKA, J.)**

C E R T I F I C A T E

Certified to be true and correct copy of original signed Judgment / Order.