IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WA.No. 1343 of 2015 () IN WP(C).30950/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 30950/2013 of HIGH COURT OF KERALA DATED 18-11-2014

APPELLANT(S)/1ST RESPONDENT:

K.G.KUMAR @ KUMARAN
KUMARAMANDIRAM, KAYILA, MAYILODE P O
VELIYAM, KIZHAKKEKARA, KOTTARAKKARA
KOLLAM-691537

BY ADVS.SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN

RESPONDENT(S)/PETITIONER/RESPONDENTS 2 TO 4:

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1. THE PARAVUR S N V REGIONAL CO-OPERATIVE BANK LTD NO.1685
S.PARAVOOR P.O., KOLLAM-691301
REPRESENTED BY ITS SECRETARY.

2. THE KERALA CO-OPERATIVE TRIBUNAL
FORT P.O., THIRUVANANTHAPURAM-695023.

3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
CIVIL STATION, KOLLAM-691013.

4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
ARBITRATOR CUM SALE OFFICER
O/O.THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
CIVIL STATION, KOLLAM-691013.

R1 BY ADV. SRI.B.SURESH KUMAR
R2 TO R4 BY SENIOR GOVERNMENT PLEADER SRI. M. MOHAMMED SHAFI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.A. NO. 1343 OF 2015

APPENDIX

APPELLANT'S ANNEUXURE :

ANNEXURE I : A TRUE COPY OF THE CERTIFICATE DATED 08.06.2015 ISSUED BY THE AGRICULTURAL OFFICER KRSIHI BHAVAN, POOYAPPALLY, CHENKULAM PO

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.
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W.A. No. 1343 of 2015
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Dated, this the 7th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

Interference made by the learned single Judge with regard to enhancement of future interest from 6 % ordered by the Co-operative Tribunal to the 'agreed rate' of 13 % + 2% penal interest as per the terms of the contract with regard to the financial assistance availed by the appellant for 'commercial purpose', is sought to be intercepted by filing this writ appeal.

2. The appellant, who is stated as an agriculturist availed a loan of Rs. 5 lakhs from the first respondent Bank, executing necessary documents with regard to creation of mortgage over the property concerned, specifying the terms. As per the terms of the loan, the amount was to be repaid within 60 months agreeing the rate of interest as '13 %', with liability to satisfy 2 % as penal interest, if at all any default was occurred.

3. Admittedly, there occurred some default and the petitioner was proceeded against by pursuing appropriate steps under Rule 69

of the Kerala Co-operative Societies Rules 1969. Ultimately, the Arbitrator passed an Award as borne by Ext. P6 dated 11.04.2012, whereby a sum of Rs. 7,20,797/- was found as the amount due to be cleared to the society, which was ordered to be paid with interest @17 %. Being aggrieved of the said Award, the appellant took up the matter by filing a revision petition before the Kerala Co-operative Tribunal raising several grounds.

4. The main contention was that the amount was used for 'agricultural purpose' and hence that the rate of interest charged by the society and ordered by the Arbitrator was not in conformity with the actual facts, figures and the relevant provisions of law. After an exhaustive analysis, the Tribunal passed Ext. P8 Award, whereby an amount of Rs.7,26,634/- was ordered to be satisfied, however the rate of interest was reduced from 17 % to '15%', observing that the agreed rate of interest was only 13% and the penal interest was only '2 %', thus coming to a total extent of 15%. The Tribunal also ordered future interest @ 6 % p.a.

5. Against the Award passed by the Tribunal, the Bank approached this Court by filing W.P.(C) No. 30950 of 2013, contending that since the transaction involved was only a 'commercial transaction', the Tribunal was not justified in having

ordered only 6% interest. It was also pointed out that, by virtue of the special provisions under the Kerala Co-operative Societies Act and the relevant Rules, particularly Rule 67 (7) (b) of the Kerala Co-operative Societies Rules, the general provisions were to be excluded. Reference was also made to the decision rendered by this Court in **Kerala State Co-op. Bank Ltd. Vs. Kerala Co-op. Tribunal [2005 (1) KLT 572]** and the decision rendered by the Apex Court in **Central Bank of India Vs. Ravindra & Ors. [(2002) 1 SCC 367].**

6. After considering the factual position that the loan extended to the petitioner was a 'commercial one', a finding was rendered by the learned Judge in the writ petition, that reduction of future interest by the Tribunal was not in conformity with the relevant provisions of law and hence it was held that the first respondent (appellant herein) is required to satisfy outstanding liability with future interest as agreed rate of 13% + 2 % (15 %), which in turn is sought to be challenged by filing this writ appeal.

7. Heard Sri. A.D. Shajan the learned counsel appearing for the petitioner and Sri. B. Suresh Kumar, the learned counsel appearing for the first respondent, besides the learned Government appearing for the respondents 2 to 4.

8. During the course of hearing, the learned counsel for the appellant points out that, the appellant has been certified as an 'agriculturist' by the Agricultural Officer of the area, as borne by Annexure A1 certificate dated 08.06.2015. It is stated that he is possessing about 1.5 acres in Pooyappally panchayath, where he cultivates coconut, vegetables, bananas etc. and that he is a small and mariginal farmer of that panchayat. It is contended in the light of the said certificate, that the financial assistance availed by the appellant ought to have reckoned as an 'agricultural loan' and as such, the interest now sought to be mulcted upon the petitioner is much on the higher side and is liable to be scaled down.

9. On going through the materials on record, it is seen that the loan availed by the appellant was a 'business loan' and not an agricultural loan. The purpose for which the loan was availed has been clearly stated in Ext. P1 application preferred by the petitioner, against column No.5, wherein it is shown as for 'business'. The tenure is stipulated as 60 months (unlike the case of the agricultural loan), thus revealing that it was only a term loan. Order sanctioning the loan has been produced as Ext. P3, wherein the nature of the loan mentioned has been mentioned as 'ordinary' and under condition No. 3, it has been clearly stipulated that the

loan sanctioned for the purpose of 'business' shall be used only for the said purpose. As per the Clause No.5, it is stated that the rate interest applicable shall be 13 %. Under condition No. 8, it is stipulated that, if at all any default was committed, the borrower would be liable to satisfy 2 % penal interest.

10. From the above, it is clear that the version now sought to be projected by the appellant before this Court, that the loan had to be treated as 'agricultural loan', does not have any factual or legal foundation. Merely for the reason that the appellant is an agriculturist having 1.5 acres of agricultural land, it does not mean that he cannot do or is not doing any other commercial activity or business. Admittedly, the amount was borrowed for 'business' and the rate of interest was 13% plus 2 % penal interest, if at all any default was there. It is also an admitted fact that the appellant has defaulted the repayment and as such, he is liable to pay 2% of interest. This being the position, no interference is warranted with regard to the judgment rendered by the learned single Judge. Interference is declined and the writ appeal is dismissed.

However considering the persuasive request made by the learned counsel for the appellant that the appellant might be given some breathing time to settle the entire liability, by way of reasonable installments, this Court finds it fit and proper to enable the appellant to wipe off the entire liability by way of 'eight' monthly installments. The initial 'seven' installments shall be @Rs.1,00,000/- each; the first of which shall be effected on before the 30th July of 2015, followed by similar installments to be effected on or before the 30th of the succeeding months. The 8th installment shall be in respect of the residual amount. It is made clear that, if any default is committed by the appellant, the respondent Bank will be at liberty to proceed with further steps for realization of the entire amount in lump, by pursuing such steps from the stage where it stands now.

sd/-

P. R. RAMACHANDRA MENON,
(JUDGE)

Sd/-

BABU MATHEW P. JOSEPH,
(JUDGE)

kmd