IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 26868 of 2006 (Y)

PETITIONER :

MATHAI JOSEPH, AGED 53 YEARS,
S/O. MATHAI, PULICKAL HOUSE, UPPUTHODU
IDUKKI.

BY ADVS. SRI.A.X.VARGHESE
SRI.JOJO VARGHESE

RESPONDENTS :

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1. STATE OF KERALA, REP. BY ITS SECRETARY
SECRETARIAT,THIRUVANANTHAPURAM.

2. KATTAPPANA BHAVANA NIRMANA
SAHAKARANA SANGHOM LTD.NO.K.369, KATTAPPANA, IDUKKI
REP. BY ITS SECRETARY.

3. JOINT REGISTRAR, CO-OPERATIVE
TRIBUNAL, THIRUVANANTHAPURAM.

4. THE SPECIAL SALE OFFICER,
KERALA STATE CO-OPERATIVE HOUSING SOCIETY
(CO-OPERATIVE SENIOR INSPECTOR) IDUKKI.

R2 BY ADVS. SRI.GEORGE THOMAS (MEVADA)
SRI.AMAL GEORGE
R BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26868 of 2006 (Y)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE AWARD PASSED BY ARBITRATOR DATED 24/8/1992

EXT.P2 : COPY OF THE ORDER PASSED BY THE HON'BLE CO-OPERATIVE TRIBUNAL IN R.P.NO.345/2002 DATED 26/4/2003

EXT.P3 : COPY OF THE JUDGMENT DATED 4/2/2004 IN WP(C)NO.22924/2003 OF THIS HON'BLE COURT

EXT.P4 : COPY OF THE LETTER DATED 17/8/2005 OF JOINT REGISTRAR, IDUKKI

EXT.P5 : COPY OF THE APPLICATION DATED 1/9/2005

EXT.P6 : COPY OF THE COMMUNICATION NO.P.G.R.C. D1704/2004 DATED 26/4/06

EXT.P7 : COPY OF THE APPLICATION DATED 10/3/05

EXT.P8 : COPY OF THE GOVERNMENT CIRCULAR NO.15/2004 DATED 31/3/2004

EXT.P9 : COPY OF THE CIRCULAR NO.23/04-05 DATED 1/3/2005

EXT.P10 : COPY OF THE NOTICE DATED 21/6/06

EXT.P11 : COPY OF THE JUDGMENT DATED 3/8/06 IN WP(C)NO.20542/06 OF THIS HON'BLE COURT

EXT.P12 : COPY OF THE COMMUNICATION NO.B 1318/2006 DATED 1/9/2006

EXT.P13 : COPY OF THE NOTICE DATED 2/9/2006

RESPONDENTS' EXHIBITS :

EXT.R2(a) : COPY OF THE LETTER ISSUED BY THE MANAGING DIRECTOR, KERALA STATE CO-OPERATIVE HOUSING FEDERATION LTD. DATED 02.03.1989

EXT.R2(b) : COPY OF CIRCULAR NO.55 DATED 30.11.2006

EXT.R2(c) : COPY OF CIRCULAR NO.59 DATED 30.11.2006

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.26868 of 2006

Dated this the 25th day of February, 2015

JUDGMENT

The petitioner had availed a housing loan of ₹75,000/- from the 2nd respondent in the year 1989. The amount was to be repaid in equated monthly intalments over a period of 20 years. However, the petitioner defaulted repayment of the loan. The Bank initiated proceedings against him and Ext.P1 award was passed on 24.08.1992 for an amount of ₹1,02,898/- with 16% interest thereon. The petitioner challenged the award in O.P.No.9886/2001, before this Court. The said writ petition was disposed of directing the petitioner to approach the Co-operative Tribunal. Accordingly, the petitioner approached the Tribunal. The Tribunal went into the matter and reduced the interest to 6% per annum. The 2nd respondent challenged the order of the Co-operative Tribunal before this Court in O.P.No.22924/2003. As per Ext.P3 judgment dated 04.02.2004, this Court set aside the order of the Tribunal and directed reconsideration of the matter. Accordingly the matter was reconsidered and an award was passed fixing the interest at 14.5%.

2. In the meanwhile, the petitioner had approached the 3rd respondent by submitting a representation. The 2nd respondent issued Ext.P4 dated 17.08.2005. According to the counsel for the petitioner, the total amount as per Ext.P4 is only ₹61,467/-. The petitioner had to pay in addition, an amount of ₹17,500/- towards

legal expenses. Thereafter, the petitioner submitted Ext.P5 representation to the 3rd respondent seeking the benefit of the One Time Settlement Scheme that had been introduced by the Government. Ext.P7 is another representation seeking the benefits of One Time Settlement Scheme. Exts.P8 and P9 are relied upon to point out that, the term of the One Time Settlement Scheme had been extended up to 31.03.2005. However, by Ext.P6 the petitioner was denied the benefits thereof.

3. In the above circumstances, the petitioner approached this Court again by filing W.P.(C).No.20542/2006. The said writ petition was disposed of by Ext.P11 judgment dated 03.08.2006 directing the request of the petitioner to be considered. Though the 3rd respondent had addressed Ext.P12 letter to the 2nd respondent directing that the direction in the judgment Ext.P11 be complied with, by Ext.P13 dated 02.09.2006, the petitioner has been directed to pay the amount. This writ petition has been filed in the above circumstances. The petitioner seeks the benefits of Exts.P8 and P9 One Time Settlement Scheme.

4. The claim of the petitioner is opposed by the 2nd respondent. Adv.Sri.Amal George appears for the 2nd respondent. A counter affidavit has been filed producing Exts.R2(a) to R2(c) documents. A statement of accounts has also been produced. According to the counsel for the 2nd respondent, the Society has

been formed for the purpose of providing financial assistance to eligible persons who construct houses. Since the Society does not have funds of its own, the requisite funds are borrowed by the Society from the Kerala State Co-operative Housing Federation paying interest at the rate of 13.5%. The said borrowed amount is disbursed to the members availing housing loans at the rate of 14.5% interest. According to the counsel, the Society is surviving solely on the strength of the 1% extra interest that is charged. In the event of default being committed by the borrower, the Society is also penalised by being charged penal interest at the rate of 2% per annum. Therefore, in the case of the petitioner, according to the counsel, the Society has not only been deprived of the 1% interest that was due to it, but have also been compelled to pay extra interest at the penal rate. The above being the position, it is contended that, the petitioner is not entitled to claim the benefit of One Time Settlement that he has sought for in this writ petition.

5. In the first place, according to the counsel, the petitioner has not sought for the benefit of the One Time Settlement Scheme at the appropriate time. Secondly, it is pointed out that, the said Scheme is not applicable to loans disbursed on the strength of borrowed funds. For the above reasons, the counsel seeks the dismissal of the writ petition.

6. Adv.Sri.Jojo Varghese who appears for the petitioner

places reliance on the statement of accounts produced by the 2nd respondent to point out that, an amount of ₹10,000/- has been shown to have been remitted on 20.01.2003 for the purpose of availing the One Time Settlement. The same according to the statement of accounts was retained in a suspense account. The petitioner has not been given credit for the said amount, according to the counsel.

7. Heard. The petitioner does not dispute the fact that, an amount of ₹75,000/- was availed as Housing Loan in 1989 and that, repayment of the said loan is remaining in default. The claim of the petitioner is limited to seeking the benefits of the One Time Settlement Scheme introduced by the Government. Exts.P8 and P9 are relied upon to contend that, though the petitioner had sought for the benefits of the said scheme, the same was not extended to him. A perusal of Exts.P8 and P9 shows that, the One Time Settlement Scheme had been extended up to 31.03.2005 by the said proceedings. According to the petitioner, Ext.P7 dated 10.03.2005 is a request for such benefit submitted by the petitioner. However, a perusal of Ext.P6 shows that, though the petitioner had been requested to avail the benefits of the One Time Settlement Scheme by the Assistant Registrar of Co-operative Societies (General) Udumbanchola on 02.02.2005, he had not availed the benefits thereof. No challenge is made by the

petitioner to the statements in Ext.P6. Therefore, it has to be presumed that, the petitioner had not availed the benefits of the said Scheme.

8. As rightly pointed out by the counsel for the 2nd respondent, Ext.P8 shows that loans granted utilizing funds borrowed from other institutions on payment of interest have been specifically exempted from the scope of the One Time Settlement Scheme. The loan in the present case having been disbursed after borrowing funds from the Kerala State Co-operative Housing Federation, therefore falls outside the scope of the One Time Settlement Scheme. Ext.R2(a) the sanction letter granting loan to the petitioner also supports the contention that, the funds were raised by borrowing from the Kerala State Co-operative Housing Federation. Ext.R2(c) Circular also contains a similar provision. In view of the above, it is held that the petitioner is not entitled to the benefits of the One Time Settlement Scheme.

9. What remains is only the issue of giving credit to the petitioner for the amount of ₹10,000/- that is seen to have been remitted by him on 20.01.2003 as per the statement of accounts produced. The counsel for the 2nd respondent fairly agrees that the said amount would be given credit. The said submission is recorded.

For the above reasons, I find no grounds to grant any of the reliefs sought for in this writ petition. The same is therefore dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV