IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).NO. 27569 OF 2012 (U)

PETITIONER:

VINCENT MATHEW,
KIZHAKKE IYKARAKUNNEL HOUSE, ULLOANADU.P.O
PRAVITHANAM, BHARANANGANAM VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT.

BY ADVS.SRI.ASP.KURUP
SRI.SADCHITH.P.KURUP

RESPONDENT(S):

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1. THE GRIEVANCE REDRESSAL OFFICER,
   AGRICULTURAL & FINANCIAL INCLUSION DEPARTMENT,
   FEDERAL BANK LIMITED, FEDERAL TOWERS, MARINE DRIVE,
   KOCHI-682031.

2. THE FEDERAL BANK LTD,
   ELANJI BRANCH, ELANJI, ERNAKULAM DISTRICT,
   REPRESENTED BY ITS BRANCH MANAGER, PIN-686665.

R1,2 BY ADV. SRI.K.ANAND (SR.)
R BY ADV. SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 27569 OF 2012 (U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT-P1 TRUE COPY OF SALE DEED NO.795/1985 IN THE NAME OF PETITIONER

EXT-P2 TRUE COPY OF THE TRANSACTION DETAILS ISSUED BY 2ND RESPONDENT TO PETITIONER

EXT-P3 TRUE COPY OF THE REPRESENTATION DATED 27.7.2009 GIVEN BY PETITIONER TO 2ND RESPONDENT

EXT-P4 TRUE COPY OF THE REPLY DATED 23.10.2009 ISSUED BY 2ND RESPONDENT TO PETITIONER

EXT-P5 TRUE COPY OF THE APPEAL DATED 16.11.2009 GIVEN BY PETITIONER TO THE BANK.

EXT-P6 TRUE COPY OF THE HEARING NOTE DATED 19.9.2012 GIVEN BY PETITIONER TO 1ST RESPONDENT.

EXT-P7 TRUE COPY OF THE ORDER DATED 26.9.2012 26.9.2012 PASSED BY 1ST RESPONDENT

EXT-P8 TRUE COPY OF THE LOAN AGREEMENT DATED 16.10.2006 EXECUTED BY PETITIONER TO 2ND RESPONDENT

EXT-P9 TRUE COPY OF FINANCIAL STATEMENT DATED 16.10.2006 PREPARED BY THE RESPONDENTS.

EXT-P10 TRUE COPY OF THE EXECUTION PETITION NO. 26/2014 IN O.S. 202/2011 PENDING BEFORE THE SUB COURT, PALA.

RESPONDENTS' EXHIBITS :

EXT.R2(A): TRUE COPY OF THE JUDGMENT IN O.S. 202 OF 2011 DATED 31.07.2012 OF SUB COURT, PALA.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.27569 of 2012

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Dated this the 23rd day of November, 2015

J U D G M E N T

The petitioner is an agriculturist, who has availed of an agricultural loan from the 2nd respondent, by mortgaging a total area of 2.15 Acres owned by him; but he could not repay the amount in time. While an amount of Rs.3,00,000/- was lying overdue, on account of the agricultural setbacks, the Government promulgated the Agricultural Debt Waiver and Debt Relief Scheme, 2008 *(hereinafter referred to as ' the Scheme')*. According to the petitioner, since he was eligible to have a total waiver of the loan amount, the petitioner was under the legitimate impression that his loan amount would be written off. But, the 2nd respondent did not publish the name of the petitioner in the list of persons eligible to have agricultural debt waiver and aggrieved by the same, the petitioner preferred Ext.P3 representation to the 2nd respondent. The 2nd respondent issued Ext.P4 reply stating that he is entitled to get a waiver 25% of the loan amount. Aggrieved by the non-consideration of the petitioner for total debt waiver, the petitioner preferred Ext.P5 appeal before the Appellate Authority in terms of the Debt Relief Scheme. Subsequently, after hearing the petitioner also, the 2nd respondent passed Ext.P7, declining a total waiver of the loan amount including 25%, which was already given to him under Ext.P4. This is the grievance projected by the petitioner in this Writ Petition. According to the petitioner, the denial of benefit, under the Debt Relief Scheme, to him, is arbitrary and illegal.

2. The 2nd respondent filed a counter affidavit stating that these respondents are not amenable to writ

jurisdiction under Article 226 of the Constitution of India. According to the 2nd respondent, the petitioner is not entitled to get the benefit of the full waiver of debt, as he is classified as "Other Farmer" having an extent of more than 5 Acres. It is also contended that even though, he was eligible for 25%, he has not availed of that opportunity, while the scheme was in force. The Scheme was provided for a limited period and that expired in the year 2008. After the expiry of the Scheme, the petitioner is not entitled to get any benefit under the Scheme. That apart, the agricultural loan account of the petitioner became NPA and the 2nd respondent was constrained to file O.S. No. 202 of 2011 and the court decreed the said suit on 31.07.2012 in favour of the bank, allowing the bank to realise the entire loan amount with interest from the petitioner. The said suit was decreed, after the expiry of the Scheme. But, he has not raised all these contentions in the Original Suit. Thus, the petitioner has suppressed material fact that the decree was passed allowing the recovery of entire amount, due to the bank with interest.

3. Heard the learned counsel for the petitioner and learned counsel for the 2nd respondent/bank.

4. Going by the rival pleas, it is the case of the petitioner that the is entitled to get full waiver of the debt amount. But in the Writ Petition itself he has admitted that he is having 6.6 Acres of properties. If that be so, I am inclined to accept the contention that he is not entitled to get the benefit of full waiver, as he is classified as “Other Farmer”, who is having more than 5 Acres. As regards the denial of 25% benefit, the petitioner has no case that he has remitted the said amount, during the currency of the scheme. When a Scheme is introduced for a limited period, a person, who

has not availed of that opportunity, within that specified period is not entitled to get that benefit, after the expiry of the Scheme.

5. More importantly, going by Ext.R2(a), it is seen that a civil suit has been filed by the bank against the petitioner, for realising full debt amount with interest and the suit has been decreed, as prayed for. This decree passed by the competent civil court, permitting the 2nd respondent to recover the full amount with interest stands against the petitioner. But, the petitioner has not disclosed the said fact in the Writ Petition and thereby this Court is inclined to accept the contention that the Writ Petition itself is bad by the suppression of material facts. The writ of jurisdiction cannot be exercised in favour of the petitioner, who has suppressed the material facts. The denial of benefit under Debt Relief Scheme to the petitioner is neither

arbitrary nor illegal. I do not find any special reason or circumstances, warranting interference under Article 226 of the Constitution of India.

In this analysis, this Writ Petition will stand dismissed.

Sd/-
K. HARILAL,
JUDGE

DST

//True copy//

P.A. To Judge