IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 19/12/2014

DATED: 28/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.20280 of 2014
&
M.P.No.1 of 2014

1. The President, DRL (C)No.80,
Sathyamangalam Primary Agricultural and
Rural Development Bank,
Sathyamangalam-638 402.

2. The Secretary, DRL(C)No.80,
Sathyamangalam Primary Agricultural and
Rural Development Bank,
Sathyamangalam-638 402. ...Petitioners

Vs.

1.T.Raviraj
2.T.Gunasekaran
3.Annapoorani ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records relating to the impugned order issued by the Principal District Judge, Erode in C.M.A.(CS)No.62 of 2010, dated 29.10.2012 and to quash the same.

For Petitioners : Mr.G.Sankaran

For Respondents : Mr.N.Manokaran for R2 and R3
R1 (Died)

O R D E R

The petitioners submit that the first petitioner is the President of the Sathyamangalam Primary Agricultural and Rural Development Bank and the second petitioner is the Secretary of the Sathyamangalam Primary Agricultural and Rural Development Bank. The petitioners submit that the first and second respondent's father A.D.Thimmana Gounder has availed the loan of Rs.8,99,058/- from the petitioner Bank in the year 1997 as a Non-Farm Sector Loan (NFS) for the purpose of running the jelli crusher unit. As per the terms of the loan, the loan has to be repaid in installments with interest at the rate of 17.5%. In the event of any default in payment, the respondents are liable to pay penal interest at the rate of 3%, which is presently modified as 1.5%. The interest for payment is being fixed by the petitioner-Bank based on the instructions given by the Financing Bank, viz., Tamil Nadu State Co-operative Agricultural and Rural Development Bank. Therefore, the petitioner's Bank is availing money from the Financing Department on interest and the same is being given by way of loan to the members which have to be repaid with interest fixed by the Financing Bank. The loan given as secured loan through Deed of Mortgage executed by the borrower and his brother Chinnaraj will contain the terms of payment of loan which cannot be deviated.

2. The petitioners further submit that in so far as the respondents are concerned, he has not repaid the loan amount to the petitioner Bank. He has deviated in repayment of the loan amount. Therefore, the petitioner Bank was constrained to issue notice to the respondents on 05.05.2010 to settle the outstanding dues. Even thereafter the respondent has not paid the amount. The petitioners further submit that since the respondents have not paid the loan amount for several years, the total loan outstanding in the year 2010 is Rs.44,03,331/- and therefore, the petitioner has taken appropriate steps for recovery of money from the respondents herein. The arrears of loan is liable to be recovered by the petitioner Bank by initiating appropriate proceedings under the provisions of Tamil Nadu Revenue Recovery Act, 1864 invoking powers under Section 120 of Tamil Nadu Co-operative Societies Act, 1983. Since the first petitioner being delegated with powers to initiate appropriate recovery proceedings by invoking the provisions of Revenue Recovery Act, 1864 as per the order of the Deputy Registrar, Co-operative Societies dated 16.11.2007, based on the application made by the second petitioner, the first petitioner has issued Form No.II under RRA and subsequently Form No.VII, attaching the mortgaged property belonging to the respondents for the purpose of sale of mortgaged property.

3. The petitioners further submit that as against the sale of mortgaged property issued by the first petitioner in Form No.VII, dated 03.09.2010, the respondents herein have filed an appeal before the Principal District and Sessions Judge, Erode in C.M.A.(CS)No.62 of 2010 and the same was ordered on 29.10.2012 by allowing the same and the appellants were directed to pay the principal amount with interest at the rate of 6% per annum from the date of suit till the date of realization. The penal interest is to also to be waived. The parties are directed to bear their respective costs. The petitioners further submit that the order of Principal District Judge, Erode came to be passed by placing reliance on the earlier orders passed by this Court reported in 2010-1 MLJ 295 in as much as order 34 of CPC as applicable in a claim or mortgage to the proceedings of Tamil Nadu Co-operative

Societies Act, either under Section 90 or to an appeal under Section 152 of the Act. The petitioners further submit that the orders passed by the Principal District Judge is against the law and illegal and further contrary to the provisions of Tamil Nadu Co-operative Bank Act Rules made therein and further the judgment of this Court as stated above cannot be relied upon since it is open to the Rural Development Bank to invoke the provisions of Revenue Recovery Act for recovering the arrears of amount. Hence, the petitioners entreat the Court to allow the above writ petition.

4. The second respondent submits that his father Late.Thimmana Gounder and his brother Chinnaraj had borrowed a sum of Rs.9 Lakhs from the petitioner Bank by mortgaging the properties measuring 5.07.5 hects. in S.F.No.86/1 measuring 0.14.5 hectrs. comprised in S.F.No.86/2 measuring 0.86.0 hectrs. comprised in S.F.No.93/7, measuring 2.11.5 hectrs. comprised in S.F.No.104/5 and measuring 3.14.0 hectrs. comprised in S.F.No.106/1 of Thottampalayam Village and measuring 0.07.5 hectrs. comprised in S.F.No.234/1 and measuring 0.07.5 hectrs. in S.F.No.234/2 of Thoppampalayam Village. The second respondent further submits that the said mortgage deed dated 09.10.1997 was executed by above said Thimmana Gounder and Chinnaraj and their children including the second respondent towards security for the repayment of the loan. The second respondent further submits that his father Thimmana Gounder died on 30.04.2005 and his brother Chinnaraj died on 26.12.2003 and the second respondent's brother died on 06.11.2011. The second respondent further submits that the petitioner Bank had sanctioned a sum of Rs.9 Lakhs in loan No.36/NFS on 09.10.1997 and the amount was disbursed in three installments dated 21.10.1997, 11.11.1997 and 18.11.1997. Thereafter, the loanee has repaid a sum of Rs.1,60,000/- to the petitioner Bank. Further, a sum of Rs.50,000/- has been paid by way of Demand Draft dated 04.09.2005.

5. The second respondent further submits that on 05.05.2010, the then Special Officer of the petitioner Bank issued a notice demanding Rs.44,03,331/-. In the mean time, the State Government has issued G.O.(2D)No.12, Co-operative, Food and Consumer Protection Department, dated 28.02.2009, whereupon the Society has demanded Rs.23,06,136/- under the Interest Waiver Scheme. The second respondent further submits that unmindful of the above said Interest Waiver Scheme, the then Special Officer of the petitioner Bank has issued a sale notice dated 03.09.2010 by throwing the jurisdiction under Sections 118 and 119 of the Tamil Nadu Co-operative Societies Act, 1983 r/w Section 161 of the Tamil Nadu Co-operative Societies Rules, 1988. Aggrieved against the said demand notice, all the legal-heirs of the Late.Thimma Gounder filed an Appeal in CMA (CC.S)No.62 of 2010 on the file of learned Special Tribunal for the Co-operative cases / Principal District Court, Erode. The said appeal was partly allowed on 29.10.2012, whereby and where-under, the appellants therein were directed to pay the principal amount with interest at the rate of 6%. The operative

portion of the judgment dated 29.10.2012 reads as follows:-

> ".... In the result, the Civil Miscellaneous Appeal is partly allowed. The order for sale of the mortgaged property by the Special Officer / Sale Officer / the first respondent in Form vii dated 03.09.2010 is modified. The appellants are directed to pay the principal amount with interest at the rate of 6% per annum from the date of suit till the date of realization. The penal interest is also to be waived. The parties are directed to bear their respective costs."

6. The second respondent further submits that in pursuance to the judgment and decree dated 29.10.2012, the petitioner has to pay the principal due of Rs.8,99,058/- with 6% interest, which comes to Rs.18,47,532/-. The second respondent further submits that in view of the death of the principal borrower, the respondents being the legal-heir and co-executants of the mortgage is liable to pay a sum of Rs.18,47,532/-. Accordingly, the second respondent has sent a representation dated 27.10.2014 to the petitioners to pass an order permitting the second respondent to pay the said amount to close the loan account. The second respondent further submits that even after receipt of the representation dated 27.01.2014, the petitioners have not passed any orders till date. The judgment and decree dated 29.10.2012 made in CMA (CS)No.62 of 2010 has attained finality. Therefore, there is no legal impediments for the petitioners to receive the principal due with 6% interest. Furthermore, the petitioners have issued a notice under the Interest Waiver Scheme asking the second respondent to pay a sum of Rs.17,79,746/-. The second respondent further submits that the petitioners have to come forward to receive either the principal due with interest at the rate of 6% as per the judgment and decree dated 29.10.2012 or to receive amount under the Interest Waiver Scheme. The inaction on the part of the petitioners have created a strong doubt about their conduct. Hence, the second respondent entreats the Court to dismiss the above writ petition.

7. The highly competent counsel appearing for the petitioners Mr.G.Sankaran submits that the first and second respondent's father has availed the loan of a sum of Rs.8,99,058/- from the petitioner's Bank in the year 1997 against non-farm sector loan. As per the terms and conditions of the loan, the rate of interest is 17.5% per annum and in the event of any default, penal interest of 3% will be levied. Now, it has been modified as 1.5%. The said loan was granted after mortgaging the respondents landed property. The loanee had not remitted the principal amount as well as interest. Hence, the petitioners had issued demand notice dated 05.05.2010. The loan amount as per the calculation comes to a sum of Rs.44,03,331/- upto the year 2010. The petitioner Bank had initiated appropriate proceedings under the provisions of Tamil Nadu Revenue Recovery Act, 1864 invoking powers under Section 120

of Tamil Nadu Co-operative Societies Act, 1983. The Deputy Registrar, Co-operative Societies had issued attachment order for attaching the mortgaged property belonging to the respondents. The same was challenged by the respondents by way of appeal before the District Court, Erode and the District Court, Erode allowed the appeal and directed the respondents / loanee to pay the principal amount with interest at the rate of 6% per annum. The findings of the District Court regarding rate of interest is against the Tamil Nadu Co-operative Banks Financial Rules. Hence, the highly competent counsel entreats the Court to set-aside the decree and judgment passed in C.M.A.(CS)No.62 of 2010, on the file of Principal District Judge, Erode, dated 29.10.2012.

8. The highly competent counsel Mr.N.Manokaran appearing for the respondents 2 and 3 submits that the father of the respondents had mortgaged the agricultural lands with the petitioner's bank and availed a sum of Rs.9 Lakhs. The original borrower and his brother have expired. However, a sum of Rs.2,10,000/- has been remitted to the bank out of the loan amount. The Special Officer of the petitioner's bank had issued demand notice to the respondents and claimed a sum of Rs.44,03,331/- as outstanding amount without waiving under the interest waiver scheme as per G.O.(2D)No.12, Co-operative, Food and Consumer Protection Department, dated 28.02.2009. As such, the demand notice is not sustainable under law. Against the said notice, appeal has been filed before the District Court. The learned Judge, after conducting a comprehensive trial, had passed the decree and judgment. The respondents are prepared to comply with the decree and judgment passed by the Principal District Court in C.M.A.(CS) No.62 of 2010. After obtaining the decree and judgment, the respondents had submitted a representation to the petitioners, which is still pending.

9. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, this Court observes that the same issue has been decided in the connected writ petition in W.P.No.23825 of 2014. Therefore, this Court is not inclined to interfere with the impugned order passed by the Principal District Court, Erode in C.M.A.(CS)No.62 of 2010, dated 29.10.2012. Hence, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

r n s

To

The Principal District Judge,
Erode.

1 CC to Mr.N.Manokaran, Advocate SR.No. 52612

W.P.No.20280 of 2014 &
M.P.No.1 of 2014

GJ (CO)
PSI (08.10.2015)