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.23825 of 2014

T.Gunasekaran ...Petitioner

Vs.

1. The Managing Director / Additional Registrar,
   TN State Co-operative Primary Agricultural &
   Rural Development Bank Ltd.,
   Chennai-600 004.

2. The Deputy Registrar of Co-operative Agricultural &
   Rural Development Bank Ltd.,
   Gobichettipalayam, Erode District.

3. The President,
   Sathyamangalam Co-operative Primary Agricultural &
   Rural Development Bank Ltd.,
   Sathyamangalam - 638 407.
   Erode District. ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus to direct the respondents to receive the balance loan due of Rs.18,47,532/- with interest at the rate of 6% per annum and release the original title deeds to the petitioner in respect of the loan account No.36/NFS by considering the representation dated 27.01.2014

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.L.P.Shanmugasundaram
Spl.Govt. Pleader for R1 and R2

Mr.G.Sankaran for R3

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O R D E R

The petitioner submits that his father Late.Thimmana Gounder and his brother Chinnaraj had borrowed a sum of Rs.9 Lakhs from the third respondent 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 petitioner 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 petitioner towards security for the repayment of the loan. The petitioner further submits that his father Thimmana Gounder died on 30.04.2005 and his brother Chinnaraj died on 26.12.2003 and the petitioner's brother died on 06.11.2011. The petitioner further submits that the third respondent 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 third respondent Bank. Further, a sum of Rs.50,000/- has been paid by way of Demand Draft dated 04.09.2005.

2. The petitioner further submits that on 05.05.2010, the then Special Officer of the third respondent 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 petitioner further submits that unmindful of the above said Interest Waiver Scheme, the then Special Officer of the third respondent has issued a sale notice dated 03.09.2010 by assigning 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

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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."

3. The petitioner 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 petitioner further submits that in view of the death of the principal borrower, the petitioner being the legal-heir and co-executants of the mortgage is liable to pay a sum of Rs.18,47,532/-. Accordingly, the petitioner has sent a representation dated 27.10.2014 to the respondents to pass an order permitting the petitioner to pay the said amount to close the loan account. The petitioner further submits that even after receipt of the representation dated 27.01.2014, the respondents 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 respondents to receive the principal due with 6% interest. Furthermore, the respondents have issued a notice under the Interest Waiver Scheme asking the petitioner to pay a sum of Rs.17,79,746/-. The petitioner further submits that the respondents 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 respondents has created a strong doubt about their conduct.

4. The petitioner further submits that the third respondent has informed the petitioner that the Society has taken some steps to file an appeal against CMA (CS)No.62 of 2010. but, the petitioner has not received any notice till date. The petitioner further submits that the respondents have no legal right to challenge the order dated 29.10.2012 . Therefore, the petitioner has filed the above petition to direct the respondents to receive the balance loan due of Rs.18,47,532/- with interest at the rate of 6% per annum and release the original deeds and consider the representation dated 27.01.2014 of the petitioner.

5. The third respondent has filed a counter statement and resisted the above writ petition. The third respondent submits that the father of the petitioner viz., A.O.Thimmanna Gounder availed loan of Rs.8,99,058/- from third respondent Bank in the year 1997 as Non-Farm Sector Loan. As per the terms of loan, the loan has to be repaid in installments with interest @ 17.5% and in the event of

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any default in payment, the petitioner is liable to pay penal interest @3%. The interest for payment is being fixed by the third respondent Bank based on the instructions given by the Financing Bank, viz., Tamil Nadu State Co-operative Agricultural and Rural Development Bank. The third respondent further submits that since the petitioner's father has not repaid the loan amount, the Bank issued notice dated 05.05.2010, to settle the outstanding dues. Arrears of loan is liable to be recovered by the Bank by initiating appropriate proceedings under the provisions of Tamil Nadu Revenue Recovery Act, 1864 invoking power under Section 120 of the Tamil Nadu Co-operative Act, 1983. The third respondent further submits that orders came to be passed by the Deputy Registrar of Co-operative Societies on 16.11.2007 based on which application was made by the Bank and Form No.II under RRA and Form No.VII were issued attaching the mortgaged property belonging to the petitioner. When the mortgaged property was brought to sale, the legal-heirs of A.O.Thimmana Gounder filed CMA(CS)No.62 of 2010 before the District and Sessions Judge, Erode and the same was ordered on 29.10.2012 by allowing the same with directions to the appellants to repay the principal amount along with interest @ 6% per annum from the date of suit till the date of realization. The penal interest was also directed to be waived.

6. The third respondent further submits that as against the order passed in C.M.A.(CS)No.62 of 2010, dated 29.10.2012, a writ petition was filed on behalf of third respondent Bank before this Court in W.P.No.20280 of 2014 since the rate of interest and penal interest payable by the defaulting member has been fixed based on the directions of the Financing Bank and the recovery of loan only as per the procedure established by law and further another writ petition filed by the petitioner herein was also dismissed by the orders of this Court. The third respondent further submits that this Court has admitted the writ petition filed by the third respondent Bank in W.P.No.20280 of 2014 and further granted an order of interim stay against the orders passed in CMA(CS)No.62 of 2010, dated 29.10.2012. In view of the interim stay granted in the writ petition as against the order passed by the District Court in CMA(CS)No.62 of 2010, dated 29.10.2012, the petitioner is not entitled to relief as prayed for in the writ petition. The third respondent further submits that with reference to applicability of interest by waiver scheme, it is submitted that the waiver scheme was introduced by State Government to be availed by the petitioner within the time stipulated whereas the interest waiver scheme ordered by the State Government was over long back as early as on 30.06.2009 and therefore, the petitioner cannot claim any right over the same. The third respondent further submits that when the Financing Bank has issued directions for fixation of interest, the same has to be duly complied with by the third

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respondent Bank. The third respondent Bank has no power or authority for waiver of interest as per the terms of loan based on the directions of the Financing Bank. Hence, the third respondent entreats the Court to dismiss the above writ petition.

7. The highly competent counsel Mr.N.Manokaran appearing for the petitioner submits that the petitioner's father and his brother had borrowed a sum of Rs.9 lakhs from the third respondent's agriculture bank after mortgaging the subject matter of the property. The petitioner's father and his brother had expired on 30.04.2005 and 26.12.2003 respectively. The third respondent had sanctioned the said loan of a sum of Rs.9 lakhs on 09.10.1997. The said amount was disbursed in three installments. The loanee has paid a sum of Rs.2,10,000/-, out of the total loan amount. The Special Officer, who is attached to the third respondent's Bank had issued demand notice dated 05.05.2010 and demanded a sum of Rs.44,03,331/- as outstanding dues. As per the State Government G.O. dated 28.02.2009, the Society has demanded a sum of Rs.23,06,136/- under the interest waiver scheme. Without considering the scheme, the third respondent had issued a sale notice dated 03.09.2010. Against the said notice, the legal-heirs of the late principal borrower have filed an appeal before the District Court, Erode and the learned Judge partly allowed the said appeal on 29.10.2012 and directed payment of the principal amount with interest at the rate of 6% per annum.

8. The highly competent counsel appearing for the petitioner further submits that pursuant to the decree and judgment, the petitioner is liable to pay a sum of Rs.18,47,532/- to the respondents, but they have not passed any orders as of now. The order of the Principal District Court, Erode passed in CMA(CS) No.62 of 2010, dated 29.10.2012 has become final. As such, the respondents have to comply with the decree and judgment passed by the Principal District Court. Further, the respondents have issued notice to the petitioner and asked him to pay a sum of Rs.17,79,746/- which is against the order passed by the District Court. Hence, the highly competent counsel prays this Court to direct the respondents to release the original title deeds after receiving the loan amount as per the District Court order passed in CMA (CS)No.62 of 2010, dated 29.10.2012.

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9. The highly competent Special Government Pleader Mr.L.P.Shanmugasundar appearing for the respondents 1 and 2 submits that the father of the petitioner has received a sum of Rs.8,99,058/- from the third respondent Bank in the year 1997 as non-farm sector loan. As per the terms and conditions, the loanee has to pay interest at the rate of 17.5% per annum. In the event of any default in payment, the loanee is liable to pay penal interest

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at the rate of 3% per annum. The third respondent is functioning under the direction and instruction of the Tamil Nadu Co-operative Agricultural Bank and Rural Development Bank. The original loanee had not paid the said loan amount including interest. Therefore, the competent authority viz., The Deputy Registrar of Co-operative Societies passed order dated 16.11.2007 to attach the mortgaged property in order to recover the loan amount. The same was challenged by the petitioner before the District Court by way of appeal and the same was partly allowed. The third respondent also filed W.P.No.20280 of 2014 before this Court and challenged the order of the District Judge and this Court ordered grant of interim stay of the order. Hence, the highly competent Special Government Pleader entreats the Court to dismiss the above writ petition.

10. 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 is of the view that the petitioner's prayer is to direct the respondents to release the original title deeds to the petitioner after receiving the balance loan due of Rs.18,47,532/- with interest at the rate of 6% per annum. The petitioner's further prayer is to consider his representation dated 27.01.2014 which is pending on the file of the first respondent. This Writ Court is not an executing Court to execute the decree and judgment passed in CMA(CS)No.62 of 2010, on the file of Principal District and Sessions Judge, Erode, dated 29.10.2012. The Writ of Mandamus will be applicable if any irregular order is passed by the State Government or Central Government or quasi Government, but not with the judicial order. Therefore, this Court declines to offer direction to the respondents to execute the judicial order passed by the Principal District Court, Erode. As such, the petitioner's main prayer is rejected. However, the petitioner's representation dated 27.01.2014 is pending on the file of the first respondent. Hence, this Court directs the first respondent to dispose the said representation on merits within a period of six weeks from the date of receipt of a copy of this order, after serving advance notice to the petitioner. Accordingly, the above writ petition is disposed of. There is no order as to costs.

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Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Managing Director / Additional Registrar,
   TN State Co-operative Primary Agricultural &
   Rural Development Bank Ltd.,
   Chennai-600 004.

2. The Deputy Registrar of Co-operative Agricultural &
   Rural Development Bank Ltd.,
   Gobichettipalayam, Erode District.

3. The President,
   Sathyamangalam Co-operative Primary Agricultural &
   Rural Development Bank Ltd.,
   Sathyamangalam - 638 407.
   Erode District.

4. The Principal District Judge,
   Erode.

W.P.No.23825 of 2014

GJ (CO)
PSI (08.10.2015)

HIGH COURT OF JUDICATURE MADRAS
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