IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7168 of 2013
and
M.P.No.1 of 2013

Tmt.N.Ellammal ... Petitioner

vs.

1. The Branch Manager,
   State Bank of India,
   A.Mallapuram Branch
   A.Mallapuram (Village and Post)
   Palacode Taluk,
   Dharmapuri District.
   Pin-636 801.

2. The Regional Manager,
   State Bank of India,
   Regional Business Office,
   No.II, 1st Floor,
   Ramakrishna Road,
   Srirangapalayam,
   Salem – 636 007.

3. The Deputy General Manager,
   State Bank of India,
   Zonal Office,
   P.B.No.3897,
   Kuriji Complex,
   State Bank Road,
   Coimbatore-641 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to quash the impugned letter dated 09.11.2012 of the 1st respondent and direct the 1st respondent to adjust the fixed deposit amount of Rs.2,00,000/- in Ac.No.31012236295 dated 05.01.2010 with accrued interest in the Housing Loan by giving waiver of interest from 09.05.2010, i.e. the date of death of my husband and to return the original documents given as security.

For Petitioner : Mr.L.Chandrakumar for Mr.P.Rajesh

For Respondents : Mr.S.Sethuraman

O R D E R

Heard Mr.L.Chandrakumar, for Mr.P.Rajesh, learned counsel appearing for the petitioner and Mr.S.Sethuraman, learned counsel appearing for the respondent/bank and perused the materials placed on records including the counter filed by the respondent/bank.

2. The petitioner seeks for issuance of writ of certiorarified mandamus to quash the letter issued by the 1st respondent dated 09.11.2012 and to direct the 1st respondent to adjust the Fixed Deposit amount of Rs.2,00,000/- with accrued interest towards the housing loan by giving waiver of interest from 09.05.2010.

3. The petitioner's husband viz., C.Noorandan was working as a Primary School Headmaster and he died on 09.05.2010 due to massive heart attack. The petitioner's husband had availed three loans from the respondent bank viz., housing loan, a diary loan and an agricultural loan. According to the petitioner, her husband was regularly remitting the installments. The petitioner has one son and two daughters and all of them are married and her son met with an motor accident and he is unable to carry on his job as a driver. The petitioner would state that her husband has married another person and through her, one daughter by name Sudha, was born and she had also completed her education by availing loan from the same bank. After the demise of the petitioner's husband, the petitioner sent a letter on 12.05.2010 requesting the Branch Manager to furnish details of the loan. Further, the petitioner said to have met the Branch Manager and requested that the housing loan arrears of Rs.1,80,000/- the diary loan arrears of Rs.40,000/- and the agricultural loan arrears of Rs.40,000/- may be adjusted from the Fixed Deposit and the balance amount may be paid. According to the petitioner, the respondent bank did not take prompt action and after several years now they passed the impugned order calling upon the petitioner to remit a sum of Rs.2,22,326/-.

4. The respondent bank in their counter affidavit have admitted that there is a fixed deposit of Rs.2 laksh along with

interest at Rs.34,722 was adjusted towards the loan account and they would sate that the petitioner is aware of the same. It is further submitted that since the fixed deposit was adjusted to the loan account, one time settlement cannot be granted and the question of granting any concession also does not arise. Further even in respect of the agricultural loan it is submitted that the petitioner is not entitled for the waiver of interest since she is not the beneficiary of the loan. Further it is stated that the Bank has credited the available amount in the Fixed deposit to the housing loan and the housing loan could not be satisfied with the amount available in the fixed deposit. Therefore, the impugned demand has been issued.

5. After hearing the learned counsel for the parties and perusing the materials placed on record including the counter affidavit, it is evident that the respondent bank has not disclosed as on what date the fixed deposit account along with accrued interest was adjusted towards the housing loan. It is the consistent case of the petitioner that soon after her husband's demise, she made a request to the respondent bank that the fixed deposit account along with accrued interest may be adjusted towards the housing loan. If such was the factual situation, the matter could be settled way back in the year 2010 and it is not known as to why the bank did not take steps. Further the reason assigned that the petitioner is not entitled for waiver of the agricultural loan on the ground that loan was closed by adjusting the portion of the fixed amount is not justified, since the waiver of the agricultural loan has to be considered as per the scheme. Merely because, the bank did not extend the date of the scheme to the petitioner's husband during his life time or soon thereafter is no ground to deny the benefit of the waiver scheme. The correct test to be applied would be, had the petitioner's husband been alive, would he be entitled to the benefit of the waiver scheme. This has to be considered by the respondent bank.

6. In the light of the above discussion, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the respondent bank for fresh consideration. The respondent shall call the petitioner for discussion during which it should be clearly disclosed as on what date the petitioner made a request to adjust the Fixed Deposit with accrued interest towards the loan amount and on what date the respondent bank effected the adjustment and if there was a delay committed by the bank, the petitioner is entitled to the benefit of waiver, which is permissible as per the guidelines framed by the Reserve Bank of India. With regard to the diary loan and the agricultural loan the respondent bank shall apply the test indicated by this Court in the preceding

paragraph and proceed accordingly. clarified that if the petitioner's husband was alive whether he would entitle for the waiver. The above direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

VSM Sub Assistant Registrar

To

1. The Branch Manager,
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   State Bank Road,
   Coimbatore-641 018.

+2cc's to M/s.P.Rajesh, Advocate, S.R.No.10914 & 11685
+1cc to M/s.S.Sethuraman, Advocate, S.R.No.10950

W.P.No.7168 of 2013

RSK(CO)
CA(17/03/2015)