The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.37979 of 2012

Dated 19.06.2015

Between:

Ponnapalli Ramanaiah

... Petitioner

and

Govt. of A.P., rep. by its Secretary,
Food & Agriculture, Co-operative Dept.,
Secretariat, Hyderabad and 4 others.

...Respondents

Counsel for the petitioner: Mr.A.Chandraiah Naidu

Counsel for respondents 1 & 5: AGP for Co-operation

Counsel for respondents 2 & 3: Mr.E.Satyanarayana for Mr.S.Srinivas Polavarapu

The Court made the following:

Order:

This Writ Petition is filed for a Mandamus to set aside Certificate No.180/11-12, dated 13-06-2011, and consequential Proceedings in EP.No.170/12-13, issued by respondent No.1.

I have heard Mr.A.Chandraiah Naidu, learned Counsel for the petitioner, and Mr.E.Satyanarayana, learned Counsel representing Mr.S.Srinivas Polavarapu, learned Counsel for respondent Nos.2 and 3.

The petitioner has obtained a loan of Rs.35,000/- from Kondagunta Primary Agricultural Co-operative Credit Society Limited (for short 'the Society') in the year 1996 for establishment of a poultry farm. It is the pleaded case of the petitioner that he has repaid the loan amount regularly till 2002; that he has, in all, paid a sum of Rs.25,000/- with interest; and that due to drought conditions, he could not repay the balance amount of Rs.10,000/-. He has further pleaded that under a Central Government Scheme, all agricultural loans were waived and that therefore, the balance part of the loan amount payable by him also stood waived. He has further pleaded that after a lapse of ten years, respondent No.2 has issued a notice demanding him to pay a sum of Rs.1,52,663/-, at the instance of respondent No.3, who has evidently obtained Certificate No.180/11-12 on 13-06-2011; that based on the said Certificate, respondent No.3 has filed EP.No.170/12-13; that in the said proceeding, respondent No.2 has issued form No.9, dated 01-

11-2012, proposing to conduct auction for sale of immovable property to an extent of Acs.7-23 cents belonging to the petitioner on 10-12-2012; and that though the petitioner has approached them and explained that he has no dues payable to the Society, the respondents are proceeding to sell the property. The petitioner further pleaded that, originally, he owned Acs.7-23 cents of agricultural land, out of which, he has sold Acs.2-79 cents in Survey No.73-1 and Ac.1-44 cents in Survey No.73-2 in the year 1990 itself *i.e.,* prior to his obtaining the loan and that from out of the remaining extent of Acs.3-00 cents in Survey No.158-1, he has sold Ac.1-00 in the year 2005. He has further pleaded that the respondents have not issued any notice nor conducted any enquiry as contemplated under Section 79 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act') and Rule 52 of the Andhra Pradesh Co-operative Societies Rules, 1964 (for short 'the Rules').

On behalf of respondent Nos.3 and 4, the Chief Executive Officer of respondent No.3 has filed a counter-affidavit wherein he has *inter alia* denied the plea of the petitioner that he has repaid a sum of Rs.25,000/- and that the rest of the loan amount was waived under the Central Government Scheme. It is pleaded that the petitioner has obtained a loan of Rs.32,500/- under account No.308 in the year 1996 for digging agricultural well and another loan of Rs.15,250/- under account No.317 for raising citrus trees in the years 1996 and 1999; that the petitioner has mortgaged Acs.2-79 cents in Survey No.73-1, Acs.1-44 cents in Survey No.73-2 and Acs.3-00 cents in Survey No.158/1 under mortgage deed, dated 26-03-1996, besides executing an affidavit on 24-09-1994 to the effect that he is the owner of all these properties; that they may be accepted as security; and that the petitioner has also filed adangals and other revenue records to show that the said properties belong to him as well as his family members, who have also signed as co-applicants on the mortgage deed.

The counter-affidavit specifically asserted that the Central Government Schemes and the State Government Schemes will not apply to the petitioner as he is not a small farmer; and that as the petitioner was a chronic defaulter and irregular in payment of loan installments, both the loans were rescheduled in the year 2006, as per which, the petitioner should have cleared the loans by 01-04-2008, but he has not chosen to do so.

While denying any role of respondent No.1 in recovery of loan amounts by respondent Nos.2 and 3 from the petitioner, it is further averred in the counter-affidavit that as the petitioner failed to repay the loan amounts, respondent No.3 has applied to respondent No.2 to issue a Recovery certificate under Section 71 of the Act; that the Senior Inspector/Sale Officer has issued a notice on 25-05-2011 to the petitioner to appear before him on 13-06-2011 for submission of his explanation, if any; that the petitioner failed to appear before the Senior Inspector/Sale Officer; and that therefore, after verifying the records, the Senior Inspector/Sale Officer issued a Certificate under Section 71 of the Act on 13-06-2011; that the same was served on the petitioner; that as per the said Certificate, the petitioner is liable to pay a sum of Rs.1,52,633/- with interest @ 13.25 % from 13-06-2011; that the petitioner has not raised any objection to the said Certificate nor challenged the same by filing an appeal or a Writ Petition; and that, accordingly, the

Certificate was allowed to become final by the petitioner.

Respondent No.3 further averred that based on the Certificate, dated 13-06-2011, he has filed EP.No.170/12-13 before respondent No.2 for recovery of the debt under the said Certificate; that thereupon, respondent No.2 has issued the demand notice in form No.II, on 11-09-2012, directing the petitioner to pay the due amount, failing which the mortgaged property will be sold in public auction; that the petitioner has received the said demand notice and addressed letter, dated 02-11-2012, stating that he has repaid a sum of Rs.20,000/- but received a notice demanding him to pay a sum of Rs.1,52,663/-; and that he has no dues payable to respondent No.3- Society. It is further averred that in reply to the said letter, respondent No.3 has addressed letter, dated 29-11-2012, whereunder the relevant details of the petitioner's dues were furnished and the petitioner was reminded that he has mortgaged the property; that, thereafter, respondent No.2 has issued form No.VI, on 11-09-2012, directing the petitioner to clear the loan amount; that the said notice was received by the petitioner's wife, but the same was not responded to; that respondent No.2 has also issued sale notice, dated 13-06-2011, in form Nos.8 and 9 informing the petitioner that if the payment is not made, the properties will be sold in auction on 10-12-2012; and that the petitioner has not paid the loan amount even after receipt of the said notice.

Though the counter-affidavit was filed as far back as 25-04-2013, no reply affidavit has been filed by the petitioner controverting any of the averments contained therein.

I have carefully considered the submissions of the learned Counsel for the parties with reference to their pleadings and record.

Under sub-section (1) of Section 71 of the Act, on the application made by the society or financing bank or federal society as the case may be, for recovery of arrears of any sum advanced to any of its members and on furnishing a statement of account in respect of the arrears and after making such inquiry as he deems fit, the Registrar may issue a Certificate for recovery of the amount stated therein to be due as arrears.

Under sub-section (3) thereof, a Certificate issued by the Registrar under sub-section (1) or sub-section (2) shall be final and conclusive proof of the arrears stated to be due therein and the Certificate shall be executed in the manner specified in sub-section (2) of Section 70.

Sub-section (2) of Section 70 of the Act provides the manner in which the Certificate under Section 71 may be executed.

Rule 52 of the Rules provided the procedure for execution of decrees, decisions or orders. If any person is aggrieved by the Certificate issued under Section 71, he is entitled to file an appeal under Section 76 of the Act.

From the uncontroverted facts pleaded by respondent Nos.2 and 3 in their counter-affidavit, it is evident that a Certificate under Section 71 of the Act was issued against the petitioner as far back as 13-06-2011. Except pleading that no prior notice was issued, the petitioner has not averred that he is not aware of issue of such Certificate or that he has questioned the same by way of an appeal. Interestingly, in the first part of the prayer, the petitioner prayed for setting aside Certificate, dated 13-06-2011. However, he has not even filed a copy of the said Certificate in the Writ Petition. No grounds, whatsoever, have been raised by him for setting aside the said Certificate except a vague plea that no notice was issued to him as noted herein before. In the counter-affidavit, it is categorically pleaded that before issuing the Certificate under Section 71 of the Act, the sale officer has issued notice. In any event, the petitioner cannot question the validity of the Certificate in this Writ Petition without availing the effective statutory remedy of appeal under Section 76 of the Act.

For the above-mentioned reasons, the petitioner is not entitled for a Mandamus for setting aside Certificate No.180/11-12, dated 13-06-2011.

It needs to be further noted that the petitioner has mortgaged an extent of Acs.7-23 cents. However, in his affidavit, he has stated that he has sold substantial part of the properties in the year 1990 itself. If that be so, it passes one's comprehension as to how he has mortgaged the properties, which he, allegedly, sold prior to his obtaining loan. Except his *ipsi dixit,* no material is placed before the Court in support of his averment that he has sold the properties prior to his obtaining loan in the year 1990 itself. At any rate, all these pleas cannot be entertained in this Writ Petition, when the petitioner has failed to avail the effective remedy of appeal under Section 76 of the Act.

Another aspect, which is worth notable, is that this Court has granted stay subject to condition of the petitioner depositing an amount of Rs.25,000/-. The learned Counsel for respondent Nos.2 and 3 submitted that the petitioner has not deposited any amount. The petitioner has not filed any proof to show that the interim order of this Court has been complied with.

Except raising a specious plea that the petitioner has already discharged the entire loan amount, no iota of evidence is produced before the Court in support of this submission. For all the aforementioned reasons, the petitioner does not deserve invocation of the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. Hence, the Writ Petition is dismissed with costs of Rs.10,000/-.

As a sequel to dismissal of the Writ Petition, interim order, dated 07-12-2012, is vacated and

WVMP.No.1522 of 2013 in/& WPMP.No.48168 of 2012 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 19^{th} June, 2015
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