IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2115 of 2013
DECIDED ON : August 07, 2015

Maya Devi ....Petitioner

VERSUS

State Bank of Patiala and another ....Respondents

CORAM : HON'BLE MR. JUSTICE M.M. S. BEDI.

PRESENT:- Mr. Deepak Sharma, Advocate for the petitioner.

Mr. A.K. Ahuja, Advocate for respondent No.1.

M.M.S.BEDI, J.

This revision petition has been preferred by the petitioner seeking quashing of order dated 20.11.2012 proceeding the petitioner exparte and order dated 08.01.2013 passed by the Sub Divisional Officer (Civil), Naraingarh, passing an *ex-parte* order against the petitioner in an application filed by respondent-Bank under Section 8A (1), (2) and 3(5) of Haryana Agricultural Credit Operations and Miscellaneous Provisions (Bank) Act, 1973, for brevity "the Act". The petitioner moved an application on 12.12.2012 (Annexure P-3), within a period of 22 days for setting aside the ex-parte order but the said application has been dismissed simultaneously passing a decree of an amount of Rs.12,34,229/- along with future interest @ 12.75% per annum.

While issuing notice of motion on 02.04.2013, a co-ordinate Bench of this Court had directed the petitioner to pay a sum of Rs.2 lacs, within a period of two weeks and operation of the impugned order was stayed. It is an admitted fact that an amount of Rs.2 lacs has been paid to the bank pursuant to the interim order dated 02.04.2013.

Counsel for the petitioner has submitted that the petitioner has died during the pendency of the present revision petition and that she was 80 years old lady, who had been summoned in the recovery proceedings under the Act for 20.11.2012. On the said date by the time she reached the court, the case has been adjourned to 12.12.2012. It is transpired that when she appeared before the Sub Divisional Officer(Civil), Naraingarh through her counsel on 12.12.2012, an *exparte* order had been passed against her. As such, she moved an application for setting aside the exparte order dated 20.11.2012 explaining the circumstances. The Sub Divisional Officer, (Civil), Naraingarh, vide order dated 08.01.2013(Annexure P-4), dismissed the application of the petitioner and setting aside the *exparte* order dated 20.11.2012 and allowed the application for recovery vide order Annexure P-4.

Counsel for the respondent-Bank relying upon the provisions of the Act, has submitted that the said Act has been enacted by the State legislation to make provisions to facilitate adequate flow of credit for agricultural production and developments through banks and other institutional credit agencies and for matters connected therewith or incidental thereto and that where any amount of financial assistance granted by the bank to an agriculturist is not returned or the agriculturist fails to pay the amount claimed with interest on the due date, then without prejudice to the other provisions of the Act, Local Principal Officer of the bank may forward to the Collector a certificate in matter specifying the amount due from the agriculturist. The said certificate may be forward to the Collector within a period of three years from the date when the amount specified in the certificate fell due. On the receipt of the certificate, the Collector shall proceed to recover from the agriculturist the amount specified in the certificate, as arrears of land revenue. Reference has been made to provisions of Section 18 of the said Act.

It has been argued by counsel for the respondent that the bank acquires right under Section 9 of the Act to acquire and dispose of the immovable property. While placing reliance on ***Balkar Singh Vs. Oriental Bank of Commerce*** (1993) PLJ 543, counsel for the respondent has submitted that there is no provision under the Act, empowering the prescribed authority to dismiss the claim of the bank as such, he has argued that the impugned order requiring the petitioner to pay the amount along with interest deserved to be upheld.

I have heard counsel for the petitioner, counsel for respondent No.1 and carefully gone through the impugned order as well as the provisions of the Act and the rules framed thereunder. The objective of the Act, as mentioned therein, is to make provisions to facilitate adequate flow of credit for agricultural production and development through banks. No doubt, a financial institution which renders help to agriculturist has got a right to recover the same by creating a charge on the property mortgaged with the bank. The provisions of this Act came for consideration in *Balkar Singh's* case (supra) and it was held that a bank has got two options with it to recover the amount from defaulting agriculturist i.e. to file a civil suit under Section 34 of Code of Civil Procedure or to proceed to recover the amount under the Act. Sub-Section (1) of Section 8 of the Act provides that the prescribed authority on the application of the bank should make an order against any agriculturist or his heirs or legal representatives, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist by the sale of any land or any interest therein upon which the payment of such money is charged or mortgaged. Proviso to sub-section (1) of Section 8 of the Act provided that order under sub-section (1) of Section 8 of the Act has to be passed only after giving notice to the agriculturist as the case may be, and after calling upon him to pay the amount due. Once an order under sub-section (1) of Section 8 of the Act is passed, then under sub-section(2), the same becomes executable in the same manner as a decree of a civil Court.

Section 8 of the Act reads as under:

> **"Section 8-Recovery of dues of bank through prescribed authority.**
> (1) An official of the State Government notified by the State Government as the prescribed authority for the purpose of this section may, on the application of a bank, make an order against any agriculturist or his heir or legal representative, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or any interest therein upon which the payment of such money is

charged or mortgaged:

Provided that no order shall be made by the prescribed authority under this section for the sale of any land or any interest therein or any other immovable property upon which the payment of money is charged or mortgaged unless the agriculturist or the heir or legal representative of the agriculturist as the case may be, has been served with a notice by the prescribed authority calling upon him to pay the amounts due.

(2) Every order passed by the prescribed authority under sub-Section (1) shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court."

A Perusal of Section 8 of the Act indicates that the rules of natural justice are required to be adhered to before any liability is imposed upon a person, who has taken loan from the bank. It is mandatory that agriculturist should be given a notice calling upon him to pay the amount due. In the present case, the rules of natural justice appear to have been given a complete go-bye by the concerned prescribed authority. The petitioner was proceeded against exparte on 20.11.2012. She had within a period of 30 days filed an application for setting aside the exparte order but instead of giving her fair opportunity to either repay the amount or to explain the circumstances why an order should not be passed against her, the impugned order dated 08.01.2013 (Annexure P-4) has been passed. It is settled principle of law that a Court has to apply a rule of natural justice even if the statute is silent about it. But, in the present case, the Act prescribes an opportunity of hearing to a debtor before passing an order. The prescribed authority i.e. SDO (Civil), Naraingarh, District-Ambala, was required to set aside the exparte proceedings and give a fair opportunity to the petitioner to either repay the loan or to explain the circumstances before passing a final order. The order Annexure P-4, is indeed a harsh order, harsh order and is on the face of it arbitrary, improper and in contravention to the rules of natural justice and, thus, is hereby set aside.

It will be open to the concerned prescribed authority to proceed in accordance with law against the petitioner or her legal representatives as it appears that the old lady has died during the pendency of the present revision petition after paying a sum of Rs.2 lacs to the respondent-bank.

With the abovesaid observations, the present revision petition is disposed of.

(M.M. S.BEDI)
JUDGE

07.08.2015
Anjal