IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision:-15.09.2015

1. C.W.P No.1403 of 2015

Om Parkash ..... Petitioner

Versus

State of Haryana & Ors. .....Respondents

2. C.W.P No.1415 of 2015

Jai Bhagwan & Ors. ..... Petitioners

Versus

State of Haryana & Ors. .....Respondents

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL.
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present:- Mr. S.P.Chahar, Advocate, for the petitioner.

Mr. Sandeep Moudgil, Addl. A.G. Haryana.

Mr. Suresh Kumar Redhu, Advocate, for respondent No.3.

SATISH KUMAR MITTAL, J.(Oral)

This order shall dispose of C.W.P Nos. 1403 and 1415 of 2015. Both the petitions have been filed for challenging the order passed by the Sub Divisional Officer (Civil), Jhajjar, on an application filed by the respondent-bank under Section 8(1) of The Haryana Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1973 (hereinafter referred to as 'the Act'). In both the cases, petitioners took agricultural loan from Sarv Haryana Gramin Bank for agricultural purposes through Kisan Credit Card in the year, 2005-06. When the said loan was not paid, the respondent-bank approached the Sub Divisional Officer (Civil), Jhajjar, being Prescribed Authority under said Act for issuing 'Recovery Certificate'. According to Section 8(2) of the Act, “every order passed by the Prescribed Authority under subsection (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.” Before the Prescribed Authority, both the petitioners took a specific stand that in view of the Agricultural Debt Waiver and Debt Relief Scheme, 2008, the petitioners fall under the definition of 'Marginal Farmer' or 'Small Farmer' and that under the said scheme, the loan to the Marginal farmer or small farmer has been waived. Therefore, the said loan cannot be recovered and the Prescribed Authority cannot issue recovery certificate, in this regard.

Without considering the said plea taken by the petitioner in their reply before the Prescribed Authority, the Prescribed Authority passed an order in Case No. 147/HRA with the following effect (similar order in Case No. 146/HRA).

> *“After carefully hearing the arguments advanced by the Ld. Counsel for the applicant and counsel for the respondent and after perusing the documents placed on the record I have come to the conclusion that the respondent has taken a loan of Rs. 1 lakh for agricultural purposes through Kisan credit card on dated 10.01.2006 at the rate of 12% per annum from the applicant bank. Said loan has not been repaid in time. So the orders are passed to the effect that the applicant bank will issue notice to the respondent regarding the balance amount of loan along with interest for repaying the same within two*

> *months. If after the notice the respondent does not repay the loan amount than the mortgaged land of the respondent will be auctioned and recovery be done. Order announced. File after compliance be consigned to record room."*

A perusal of the afore-said order clearly indicates that the Prescribed Authority has passed an order in a casual manner without even considering the plea taken by them to waive off the loan under the aforesaid scheme. The Prescribed Authority forgot about one aspect that it has been empowered with the power of the Civil Court that is why its order deemed to be a civil court decree and the same shall be executable in the same manner. Without realizing the adjudication given to it, the prescribed authority passed the order casually, therefore, this order cannot sustained and hereby set aside and the matter is remanded back to the Prescribed Authority to decide the issue after considering all the pleas taken by the petitioners in their replies including the plea of waiver of the loan under the aforesaid scheme. The Prescribed authority is directed to decide the same expeditiously and till then no coercive action for recovery of the alleged loan amount shall be taken.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S.CHAUHAN)
JUDGE

September 15, 2015
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I attest to the accuracy and integrity of this document