

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.08.2016

Pronounced on : 15.12.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP.(NPD)No.3524 of 2008

and

M.P.No.1 of 2008

D.Govindaraj

.. Petitioner

Vs

The Indian Bank,
Represented by its Manager,
Ammur Branch,
Walajah Taluk,
Vellore District.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the return endorsement made in E.A.SR.No.7334 of 2008 in E.P.No.93 of 2005 in O.S.No.288 of 2001, on the file of Subordinate Judge, Ranipet, dated 12.09.2008 for holding that the loan on the basis of which the suit has been filed stands automatically cancelled and the E.P. itself is liable to be

dismissed.

Petitioner : Mr.K.Ramachandran

Respondent : Mr.V.Parivallal

ORDER

The judgment debtor in EP.No.93 of 2005 is the revision petitioner before this Court. Challenging the order of returning the application in E.A.SR.No.7334 of 2008 in E.P.No.93 of 2005 in O.S.No.288 of 2001, dated 12.09.2008, on the file of the Subordinate Judge, Ranipet.

2.The case of the petitioner/judgment debtor is that originally the suit was filed by the respondent/deGREE holder for recovery of amount of Rs.1,54,139/-. The said suit was decreed on 29.11.2002, in favour of the respondent/deGREE holder. For executing the decree, the respondent/deGREE holder/bank has filed E.P.No.88 of 2005 before the Subordinate Court, Ranipet.

3.In the said Execution Petition, the property belongs to this petitioner/ judgment debtor has brought for auction sale as per the Court proceedings.

4.While pendency of Auction Sale, this petitioner has filed an application in E.A. SR.No.7334 of 2008 in E.P.No.93 of 2005 sought prayer for holding that the loan on the basis of which the suit has been filed stands automatically cancelled and the E.P. itself is liable to be dismissed. The petitioner has filed one another application for stay the sale of proclamation in the above E.P.No.93 of 2005 in O.S.No.288 of 2001, on the file of the Subordinate Judge, Ranipet, pending disposal of the application in E.A.SR.No.7334 of 2008.

5.But, the said application was returned by the Sub-Judge, Ranipet by making endorsement that how the petition is maintained without waive letter from the bank. Challenging the said return, the petitioner has filed the present civil revision petition before this Court.

6.Heard Mr.K.Ramachandran, learned counsel appearing for the petitioner and Mr.V.Parivallal, learned counsel appearing for the respondent.

7.On 28.10.2008, while this Court issued notice to the respondent by RPAD as well as the counsel, who appeared in the lower Court and post the matter on 10.11.2008 for hearing, this Court

ordered that if the sale has already taken place, confirmation alone shall be stayed. Therefore, on 12.12.2013, this Court directed the matter to be posted before the Tamil Nadu Mediation and Conciliation Centre. But, there was no settlement arrives in the Mediation and the matter has been return back to the Court.

8.The further case of the petitioner/judgment debtor is that he has filed the above application on the ground that the petitioners having entitled to the protection under the Agriculturist Protection and Welfare Scheme of 2008. The Revenue Department of the Tamil Nadu Government has also issued a membership identification certificate in favour of the petitioner/judgment debtor.

9.The petitioner also come forward by saying that as per the notification issued by the Government, all loans of the Agriculturalist stand wiped out and hence he is entitled to this protection under the scheme and he has also enclosed the copy of the membership card issued by the Government. Therefore, he prayed the Execution Court to hold that the loan on the basis of which the suit has been filed stands automatically cancelled and the E.P. itself is liable to be dismissed.

10. When the matter is taken up for hearing, Mr.V.Parivallal, learned counsel appearing for the respondent has produced the Agricultural Debt Waiver and Debt Relief Scheme, 2008 dated 28.05.2008, in which it is stated as follows:

“(i) Only those direct agricultural loans which fulfil all the three conditions, i.e., (a) disbursed between March 31, 1997 and March 31, 2007, (b)overdue on December 31, 2007, and (c)remaining unpaid until February 29, 2008 will be eligible for debt waiver/debt relief under the Scheme.”

11.As per the above scheme, it is made clear that if the petitioner has obtained the agricultural loan and he has to fulfill the 3 conditions viz.,

- (a) disbursed between March 31, 1997 and March 31, 2007,
- (b)overdue on December 31, 2007, and
- (c)remaining unpaid until February 29, 2008 will be eligible for debt waiver/debt relief under the Scheme.

As per the above scheme and the same was introduced only in the year 2008, in which it is stated that disbursed the Agriculture loan between 31.03.1997 to 31.03.2007 and over due on 31.12.2007 and

remaining unpaid until 29.02.2008 will be eligible for debt waiver/debt relief under the Scheme.

12. But, either the petitioner/judgment debtor or the respondent/decree holder have not produced about the granting of the loan and the year particulars to the petitioner/judgment debtor. Whether the said loan has fall within a period of 1997 to 2007 and this petitioner/judgment debtor is entitled for the relief. Therefore, that should be decided only by the Executing Court in the above Execution Petition, since the Executing Court has return the application filed by the petitioner/judgment debtor in E.P.SR.No.7334 of 2008 only on the ground that he has not produced waiver letter from the bank. Now, the respondent/decree holder bank himself has produced the Agricultural Debt Waiver and Debt Relief Scheme, 2008 before this Court. Therefore, there is no difficulty to number the application filed in E.A.SR.No.7334 of 2008 and the Court can decide that whether this petitioner is entitled under the above said Agricultural Debt Waiver and Debt Relief Scheme, 2008, dated 28.05.2008.

13. Apart from this, this Court shown the lenient view on this petitioner/judgment debtor, since he is in poor agriculturalist and he

has obtained agricultural loan from the respondent bank and when the other agriculturalist have benefited the said scheme that to introduced only in the year 2008, but before that the said suit has been initiated and the E.P. also filed pursuant to the above. Therefore, it is presume that this petitioner/judgment debtor has not paid the loan amount till 29.02.2008 as per the above Scheme.

14. Apart from this, it is not the case for the respondent/decree holder/bank that the petitioner/judgment debtor has not obtained the agricultural loan, but to support the case of the petitioner/judgment debtor, they have produced the above said scheme namely Agricultural Debt Waiver and Debt Relief Scheme, 2008, dated 28.05.2008. Therefore, that means, this petitioner/judgment debtor has obtained agricultural loan only and if the Executing Court can give an opportunity to the petitioner/judgment debtor, definitely the petitioner will get the benefit under the above Scheme, since other agriculturalists were receiving the benefit under the above Scheme. Therefore, I am of the view that if the petitioner/judgment debtor is comes under the benefit of the above scheme as far as his loan obtained from the bank, he must be given opportunity to putforth his case before the Executing Court in the above said E.P.No.93 of 2005. Accordingly, in the interest of justice, I am inclined to directing the

Executing Court namely Sub-Judge, Ranipet to number the E.A.SR.No.7334 of 2008 and give an opportunity to the petitioner/ judgment debtor to decide the same. If the issuance of direction to number the E.A.SR.No.7334 of 2008 will not be prejudiced to the respondent/decree holder bank.

15. Accordingly, I am inclined to pass the following orders:

(a)the petitioner is directed to re-present the E.A.SR.No.7334 of 2008 in E.P.No.93 of 2005 in O.S.No.288 of 2001, before the Subordinate Judge, Ranipet, within a period of 15 days from the date of receipt of a copy of this order.

(b)the Executing Court namely Sub-Judge, Ranipet, is hereby directed to number the E.A.SR.No.7334 of 2008 and to pass orders within a period of one month from the date of numbering the E.A.SR.No.7334 of 2008, by giving notice to both sides.

(c)Registry is directed to return the original papers in E.A.SR.No.7334 of 2008 along with the documents of Agricultural Debt Waiver and Debt Relief Scheme, 2008, dated 25.08.2008, filed by the respondent by way of typed set and the same may be

produced before the Sub-Judge, Ranipet.

(d)Further, the learned Subordinate Judge is directed to dispose the main E.P.No.93 of 2005 within a period of two months thereafter.

16.Accordingly, this Civil Revision Petition is disposed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

vs

15.12.2016

Index:Yes

Internet:Yes

To

The Subordinate Judge,
Ranipet.

M.V.MURALIDARAN,J.

VS

**Pre-Delivery Order made in
CRP.(NPD)No.3524 of 2008
and
M.P.No.1 of 2008**

15.12.2016

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