BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.10613 of 2013

T.Jagadeesan ... Petitioner

Vs.

The Cooperative Sub Registrar / Sales Officer,
Thovalai Cooperative Primary Agricultural and
Rural Development Bank Limited, DRL (E) 8,
Boothapandi & Post
Kanyakumari District ... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in connection with the impugned Notice issued by him in his proceedings in R.R.A.No.57/2012-13 dated 29.01.2013 and quash the same as illegal and arbitrary and consequently direct the respondent to close the loan account in Loan No.NFS 202 obtained by the petitioner.

For Petitioner :Mr.G.Thalaimutharasu
For Respondents :Mr.R.Velmurugan

ORDER

The prayer in the writ petition is for a writ of Certioararified Mandamus calling for the records on the file of the respondent in connection with the impugned Notice issued by him in his proceedings in R.R.A.No.57/2012-13 dated 29.01.2013 and quash the same as illegal and arbitrary and consequently direct the respondent to close the loan account in Loan No.NFS 202 obtained by the petitioner.

2. The case of the petitioner is that the petitioner availed a loan from the respondent Bank in February 2004 for a sum of Rs.1,93,000/- and the said loan carry interest at the rate of 12% per annum. The said loan was availed by the petitioner for his business purpose. He started repaying the loan regularly from June 2005. He had paid the dues regularly till 2008. However, in February 2009, the entire due period was over. Still, the principle amount along with interest was not fully paid by the

petitioner. In the meanwhile, the Government, by way of policy decision some time in the year 2009, had come forward to waive the loans borrowed from Primary Agricultural Cooperative Bank, like the respondent. When the petitioner had approached the respondent to get the benefit out of the scheme, whereby the entire loan obtained from the respondent Bank had been waived by virtue of the said policy decision of the Government, it was informed to the petitioner that the said scheme of waiver would only applicable to those who obtained loan for agricultural purpose and the same would not apply to the petitioner, since he had availed the loan for business purpose. Thereafter, the petitioner paid a sum of Rs.25,000/-, Rs.50,000/- and Rs.99,693/- during the year 2011 and 2012. According to the petitioner, altogether, the petitioner had already paid a sum of Rs.2,08,896.50/- as on 14.08.2012.

3. However, the petitioner was issued with a demand notice on 29.01.2013, whereby, the respondent Bank had directed the petitioner to pay a sum of Rs.2,63,620/-, within a period of 15 days, failing which, action would be taken against the petitioner under the Revenue Recovery Act. The said demand notice dated 29.01.2013 issued by the respondent against the petitioner is the order impugned herein. Challenging the same, the present writ petition has been filed.

4. Heard both sides.

5. The learned counsel for the petitioner would submit that already the petitioner had paid a sum of Rs.2,08,896.50/-, whereas the entire principle itself is only Rs.1,93,000/-. Therefore, the further demand made by the respondent through the impugned demand notice for recovery of a sum of Rs.2,63,620/- from the petitioner is totally unjustifiable, as the penal interest, as has been calculated by the respondent would not be applicable to the petitioner, as the petitioner has already paid maximum amount than what he has borrowed from the respondent bank, both principle and also the nominal interest at the rate of 12%. Therefore, the impugned demand notice is unlawful and unjustifiable and the same has to be quashed.

6. However, the learned counsel for the respondent bank would submit that there is no dispute that the petitioner had availed the loan for the said sum for business purpose and therefore, the claim of total waiver of the loan as provided by the Government by way of policy decision would not apply to the petitioner, as the said waiver scheme would apply only, to those who borrowed loan for the purpose of agriculture. Since the petitioner has borrowed this money from the respondent Bank for business purpose, he has to repay the entire principle with 12% interest as he agreed with the respondent bank. Therefore, at the time of making the impugned demand notice, the principle as well as the interest, which includes penal interest and further

interest comes altogether for a sum of Rs.2,63,620/- and the same was due for a long time beyond the period of repayment and the petitioner had not come forward to settle the same. Therefore, the respondent Bank had no option issued impugned demand notice. This procedure being followed by the respondent Bank is the normal procedure would be adopted in respect of any borrower, who is having outstanding dues beyond the reasonable period of repayment. Therefore, there is absolutely no infirmity in the said impugned order of demand.

7. After hearing both sides, when the Court was anxious to verify as there is any scheme of waiver, atleast to the extent of penal and subsequent interest, which, in fact, constitutes a major portion of the present outstanding, the learned counsel for the respondent bank, on instructions, submits that presently, also, there is one time settlement scheme of 2014 is in force and the said scheme since has been extended upto 31.03.2017, the persons like the petitioner may avail the benefit announced under the said scheme. According to the learned counsel for the respondent, as per the One Time Settlement Scheme 2014, the penal interest and further interest, also interest from 01.04.2014, is totally waived. According to the calculation given by the learned counsel for the respondent, the amount due as on date is Rs.3,53,990/- ie., as on 26.01.2017. However, if the one time settlement scheme 2014 and its benefits is availed by the petitioner, then the amount would be reduced to only Rs.2,14,194/-. Only this amount is pending as on date. It is also brought to the notice of this Court that this Court has already granted a conditional order in M.P.No.1 of 2013 and as per the said order, the petitioner has already paid a sum of Rs.50,000/- and the receipt of the said amount is also acknowledged by the respondent Bank through the learned counsel for the respondent.

8. Therefore, the learned counsel for the respondent would submit that if that Rs.50,000/- is also deducted from the said amount of Rs.2,14,194/- the remaining sum would come only as Rs.1,64,194/- and if the said amount is paid by the petitioner on or before 31.03.2017, the extended date of the one time settlement scheme 2014, then, the entire loan would be wiped out without any due.

9. This Court has considered the said submissions made by both sides and especially, the detailed submissions made by the learned counsel for the respondent Bank, on instructions, about the availability of the scheme, whereby if the benefit are availed by the petitioner, his financial burden to repay the amount would be considerably reduced. Considering the said facts and circumstances, this Court is of the considered view that the petitioner can very well avail the said one time settlement scheme 2014, thereby, he has to pay only a limited amount to the extent of Rs.1,64,194/-. Otherwise, if the petitioner failed to avail

the scheme ie., on or before 31.03.2017, then the entire burden of paying such huge sum to the extent of Rs.3,53,990/- has to be paid by the petitioner.

10. In the result, the following orders are passed in this writ petition:

(i) The petitioner shall be entitled to avail the benefits of One Time Settlement scheme 2014, which, according to the respondent Bank has been extended up to 31.03.2017. Since the total sum as on 26.01.2017 payable by the petitioner comes at Rs.3,53,990/- and if the one time settlement scheme is availed by the petitioner, the actual sum to be paid by him would be reduced to Rs.2,14,194/- out of which, since the petitioner has already paid Rs.50,000/- pursuant to the orders of this Court, the remaining amount of Rs.1,64,194/- shall be paid by the petitioner on or before 31.03.2017. Once such amount is paid by the petitioner, the same shall be accepted by the respondent Bank, provided, if the petitioner come forward to pay the amount on or before 31.03.2017 by specifically making a request that he is availing the benefit of the one time settlement scheme 2014 and once such amount is paid and accepted by the Bank, the petitioner can be discharged from the entire loan liability covering under the impugned order.

(ii) In view of this order, the impugned order shall not be given effect to by the respondent till 31.03.2017. However, if the petitioner has not availed the benefit now extended to him and not complied with the directions set out above, on or before 31.03.2017, it is open to the respondent Bank to proceed with the impugned demand notice in accordance with law.

With these directions, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

RR
To
The Cooperative Sub Registrar / Sales Officer,
Thovalai Cooperative Primary Agricultural and
Rural Development Bank Limited, DRL (E) 8,
Boothapandi & Post,Kanyakumari District

+1CC to Mr.R.Velmurugan, Advocate Sr.No.5607

GJM/MR/23.2.17-4p-3c