IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition Nos.11179 to 11181 of 2017
and
WMP.Nos.12120 to 12122 of 2017

Thilagarani .. Petitioner in W.P.No.11179 of 2017

K.Mugundhan .. Petitioner in W.P.No.11180 of 2017

Meenambal .. Petitioner in W.P.No.11181 of 2017

Versus

The State Bank of India
Udagamandalam Branch
Commissioner Road
Udhagamandalam
The Nilgiris District. .. Respondent in all the W.Ps.

Writ Petitions have been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in e-auction Sale Proclamation Notice dated 17.03.2017 on the file of the Recovery Officer, Debt Recovery Tribunal in Recovery Proceedings No.6 of 2016 in DRC No.6 of 2016 in O.A.No.206 of 2013 and consequently, direct the respondent bank to forthwith issue the Certificate of waiver of debt procured by the petitioners herein.

For Petitioners in all W.Ps. :Mr.P.H.Arvind Pandian, SC for M/s.Pawan Jhabakh

For Respondent in all W.Ps. : M/s.J.Pothiraj

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

Writ Petitions are filed for issue of writ of Certiorarified Mandamus to call for the records in e-auction Sale Proclamation Notice dated 17.03.2017 on the file of the Recovery Officer of

Debt Recovery Tribunal in Recovery Proceedings No.6 of 2016 in DRC No.6 of 2016 in O.A.No.2006 of 2013 and consequently, direct the respondent bank to forthwith issue a certificate of waiver of debt procured by the petitioners.

2. The case of the petitioners in all the Writ Petitions as averred in the supporting affidavits are as follows:-

(i) The petitioner in W.P.No.11179 of 2017 is the wife of petitioner in W.P.No.11180 of 2017 and daughter-in-law of the petitioner in W.P.No.11181 of 2017. All the three petitioners secured agricultural term loan from the respondent bank to the tune of Rs.9,80,000/- for each of them for carrying floriculture business. The said term loan was sanctioned on 03.03.2007, for which the petitioner in W.P.No.11180 of 2017 mortgaged an extent of 2.42 acres of land in Nilgiris District by deposit of title deeds on 15.02.2017. According to them, huge loss occurred to the agriculturalists in Nilgiris District including the petitioners, who were doing floriculture, due to the heavy storm, as a result of which, the Central Government framed a scheme for revival of all the farmers, facing hardship.

(ii) It is further averred by the petitioners in their affidavits that loan disbursed upto 31.03.2007 and overdue as on 31.12.2007 and remaining unpaid until February 2008, are termed as eligible debt, for waiver under the scheme. The petitioners in their affidavits further stated that loan secured by them was disbursed by the respondent bank on 03.03.2007, with half-yearly rest for payment of interest on the loan ending as on 03.09.2007. Hence the petitioners contended that their debt became due as on 03.10.2017, which is before December 2007 and unpaid by them till February 2008 and hence, their debt is squarely covered under the scheme of Central Government and they have every right to claim benefit under the Central Government Scheme.

(iii) The petitioners further contended that they have requested the respondent bank to extend the benefit of Central Government Scheme. However, the respondent bank not only failed to extend the scheme, but also initiated recovery proceedings against the petitioners in the year 2013, after a long period from the date of default, before the Debt Recovery Tribunal, Coimbatore. The petitioners also contended that when they intended to appear before the Debt Recovery Tribunal and explain their case, they were set exparte and an order was passed against them and therefore, an application to set aside the exparte decree was filed. The petitioners further submitted that when the petition to set aside the exparte decree was pending, they were unduly influenced by the respondent bank to refer the matter to Lok Adalat, wherein bank officials harassed the petitioners. The petitioners were ignorant of the settlement. They were forced to agree for payment of a sum of Rs.45,00,000/- (Rupees forty five lakhs only), for the loan, which ought to have been waived under the scheme. The petitioners also contended that the settlement arrived at is against the scheme of the Central Government and void under Section 23 of the Indian Contract Act, as they did not pay the amount, the respondent bank has called for e-auction Sale Proclamation of the mortgaged property against, which the present Writ Petitions are filed.

3. Learned counsel appearing for the respondent bank filed detailed counters and submitted that the conduct of the petitioners has been taken into consideration by the Tribunal. Initially they appeared through a counsel in the O.A. On 04.03.2014 vakalat was filed on their behalf and the learned counsel appeared on subsequent dates and thereafter, they remained exparte. Thereafter, Interim Application to set aside the exparte order dated 19.08.2016 was filed and pending Interim Application, the petitioners participated in Lok Adalat dated 09.11.2016 and agreed to pay a sum of Rs.45,00,000/- (Rupees forty five lakhs only) on or before 25.01.2017, in the following manner:-

Rs.5,000/-	on or before	09.11.2016
Rs.1,00,000/-	on or before	14.11.2016
Rs.22,00,000/-	on or before	25.12.2016
Rs.21,95,000/-	on or before	25.01.2017

Learned counsel for the respondent further contended that as per the terms agreed to, in the Lok Adalat award, if the petitioner failed to pay any of the aforesaid payments, then they are liable to pay the entire amount forthwith and that the Recovery Officer is entitled to proceed further to recover the entire debt, as per the Debt Recovery Certificate. Learned counsel for the respondent further contended that as the petitioners failed to adhere to the terms, agreed to in the Lok Adalat, Recovery Officer took further steps to recover the amount by issuing notice for public auction and accordingly, e-auction was conducted on 28.04.2017. In the said auction, reserve price was fixed as Rs.55,50,000/-. There was only one bid and the successful bidder has paid the entire amount, within the stipulated period and bank has realised the entire amount. Learned counsel for the respondent further contended that the petitioners are chronic defaulters and floriculture activity will not come under the scheme and hence petitioners are not entitled to claim relief, under the Agricultural Debt Waiver and Debt Relief Scheme, 2008. For the above said reasons, prayed for dismissal of the Writ Petitions.

4. Heard both the counsel and perused the materials on

record.

5. Before adverting to the submissions of the learned counsel, it would be appropriate to examine whether the Central Government Scheme is applicable to the petitioners.

6. Agricultural Debt Waiver and Debt Relief Scheme, 2008 was introduced by the Finance Minister, in his Budget Speech for the year 2008-09 for the benefit of farmers. Under the scheme, the definition in "3.2. short term production loan" means:-

> "A loan given in connection with the raising of crops, which is to be repaid within 18 months. It will include working capital loan, not exceeding Rs.1,00,000/-, for traditional and non-traditional plantations and horticulture."

7. The explanation clause- 3 under "3. Definitions" clause reads as follows:-

> "In the case of a farmer, who has obtained investment credit for allied activities, where the principal loan amount does not exceed Rs.50,000/- he would be classified as "small and marginal farmer" and, where the principal amount exceeds Rs.50,000/-, he would be classified as 'other farmer', irrespective in both cases of the size of the land holding, if any."

8. Furthermore, amount eligible for Debt waiver or Debt relief is explained, in clause 4(1)(a)(i), which reads as follows:-

> "4. Eligible amount:
>
> 4.1 The amount eligible for debt waiver or debt relief, as the case may be (hereinafter referred to as the 'eligible amount'), shall comprise of:
>
> (a) in the case of a short-term production loan, the amount of such loan (together with applicable interest):
>
> (i) disbursed up to March 31, 2007 and overdue as on December 31, 2007 and remaining unpaid until February 29, 2008.

9. Apart from the above clauses, under the scheme, the

Central Government have named the Revenue Districts covered under the scheme, in other words, the Central Government have extended the benefit of debt waiver only to certain Districts in the States. Scheme is not extended to all the States and all the Districts in the State. Hence, Agricultural Debt Waiver and Debt Relief Scheme,2008 cannot be applied to all the Districts, except those, that are enumerated or listed as Annexure-I to the Agricultural Debt Waiver and Debt Relief Scheme, 2008.

10. From the above, insofar as the claim of the petitioners, who have sought waiver of entire debt, by applying the scheme, is concerned, as material on record discloses that the petitioners, fall within the cut of date, as stipulated under clause 4(1)(a)(i) of the Scheme. Merely because the petitioners fall within the cut of date, as stipulated, loan cannot be waived under the scheme, in toto. The petitioners have to necessarily fulfil the other conditions, enumerated under the Scheme. First and foremost, the petitioners' loan neither come under the category short term production loan, as defined in clause-3.2 of the Scheme, which has to be repaid within 18 months and not exceeding Rs.1,00,000/- as working capital loan and nor come under the category, investment loan, as defined in clause-3.2 of the Scheme.

11. It is also clear from the scheme and the Annexure, that the Central Government have enlisted various Districts of the States for obtaining the benefits under the scheme. Insofar as Tamil Nadu is concerned, only 17 Districts have been enumerated by the Central Government, for extending the benefit under the Agricultural Debt Waiver and Debt Relief Scheme, 2008. Seventeen Districts of Tamil Nadu listed in the Annexure to the Scheme, are as follows:-

TAMILNADU
1. Coimbatore
2. Dharmapuri
3. Dindigul
4. Karur
5. Krishnagiri
6. Namakkal
7. Perambalur
8. Pudukottai
9. Ramanathapuram
10. Salem
11. Sivaganga
12. Tiruchirapalli
13. Tirunelveli
14. Tiruvannamalai
15. Thothukudi
16. Vellore
17. Virudunagar

Nilgiris District does not find place, in the Annexure. Unless the Scheme is applicable to Nilgiris District, the question of seeking waiver, under the scheme will not arise. On this preliminary issue itself, the Writ Petitions deserve to be dismissed.

12. As regards the conduct of the petitioners is concerned, having defaulted in paying the loan amount, when the respondent bank initiated proceedings under the Debt Recovery Act, in the year 2013, by filing O.A.No.206 of 2013, the petitioners have not acted prudently. Upon perusal of the order passed by the Debt Recovery Tribunal, Coimbatore dated 20.04.2015, it is clear that the petitioners' contention is incorrect. The petitioners were initially represented by their counsel and thereafter, they failed to appear and therefore, they were set exparte on 17.12.2014 and an exparte order came to be passed on 20.04.2015 directing the petitioners to pay Rs.23,92,115/- each, totalling Rs.71,76,345/- with future interest at the rate of 15.95% p.a. from the date of Original Application ie., 26.09.2013 till the date of realisation. The petitioners have filed a petition to set aside the exparte order. However, during the pendency of the said application, the petitioners agreed to participate in the Debt Recovery Tribunal Lok Adalat and in the said Lok Adalat, an award was passed on 09.11.2016 and the petitioners have signed for the terms, as agreed to by all the parties to the award. Paragraph Nos.2 and 3 of the said Lok Adalat award reads as under:-

> (2) that if the defendants/ borrowers/guarantors pay(s) to the plaintiff a sum of Rs.45 lakh (Rupees forty five lakhs only) as full and final settlement as follows, then the then applicant bank shall record full satisfaction of the loan and treat the liability as fully discharged.
>
> a) An amount of Rs.5,000/- has been paid today.
>
> b) An amount of Rs.1 lakh to be paid by 14.11.2016
>
> c) An amount of Rs.22 lakh to be paid by 25.12.2016
>
> d) An amount of Rs.21.95 lakh to be paid by 25.01.2017
>
> (3) that if the defendants commit default to pay any one of the instalments as agreed, which is stated in clause (2) above, then the

defendants/borrowers/guarantors are jointly and severally liable to pay the applicant bank the entire claim amount due as mentioned in clause (1), less the amount paid after this award and the recovery proceedings pending before the Recovery Officer shall continue and on sale of security, balance amount, if any, shall be recovered as specified in the said certificate.

13. Having accepted to participate in the Lok Adalat and later on, not adhering to the terms of settlement arrived before the Lok Adalat, the petitioners have come forward to challenge the e-auction subsequently issued by the respondent bank by stating that they were coerced and influenced by the bank, to participate in the settlement arrived at in the Lok Adalat. Attitude of the petitioners in having participated in the Lok Adalat and agreed to the terms arrived at, in the Lok Adalat and thereafter, failed to keep up their part of promise, as accepted in the Lok Adalat, thereafter alleging malafide intention on the part of bank, is totally unacceptable. Having known that the Scheme is not applicable, the petitioners have accepted to the terms, and thereafter, with the consent of both parties, an award came to be passed by the Lok Adalat and in such circumstances, party to the Lok Adalat cannot allege malafide intention. The question of coercion and influence by the bank does not arise and cannot be accepted.

14. For the above said reasons, the Writ Petitions deserve to be dismissed with cost of Rs.10,000/- (Rupees ten thousand only) by each of the petitioners. Cost shall be paid by the petitioners to the Chief Justice Relief Fund, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Recovery Officer,
Debt Recovery Tribunal
Coimbatore.

2. The State Bank of India
Udagamandalam Branch
Commissioner Road
Udhagamandalam
The Nilgiris District.

3. The Sub Assistant Registrar,
Accounts Section,
High Court, Madras

+1cc to M/s.Pawan Jhabakh, Advocate, S.R.No.6836
+1cc to M/s.J.Pothiraj, Advocate, S.R.No.5068

WP.Nos.11179 to 11181 of 2017

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