IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.11574 of 2017
and
W.M.P.Nos.12581 and 12582 of 2017

K.Packirisamy .. Petitioner

Vs.

1. The Government of India,
   represented by its Secretary,
   Department of Financial services,
   Ministry of Finance, Jeevan Deep Bulding,
   Parliamentary Street,
   New delhi - 110 001.

2. The Regional Director,
   Reserve bank of India,
   Tamilnadu Region,
   No.16, Rajaji Salai,
   Fort Glacis,
   Chennai - 600 001.

3. The Regional Manager,
   Indian Overseas Bank,
   Regional Office, No.4, Bharathidasan Street,
   Contonment,
   Tiruchirappalli -1.

4. The Branch Manager,
   Indian Overseas Bank,
   Manavalanallur Branch,
   Kadavasal Taluk,
   Thiruvarur District. .. Respondents

Writ petition filed under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned notice of the 4th respondent dated 25.06.2009 and quash the same and consequently direct the 3rd and 4th respondents to extend the benefit of "Agriculture Debt waiver and Debt Relief Scheme, 2008" to the petitioner by waiving his entire agriculture loan dues and also to drop recovery proceedings pursuant to the said civil court decree in O.S.No.19/2014 on the file of the learned Sub-Court, Thiruvarur

For Petitioner : Mr.R.Narayanan

For Respondent : Mr.F.B.Benjamin George,
Standing counsel for R3 and R4.
No appearance for R1 and R2.

O R D E R

This writ petition is filed challenging the notice dated 25.06.2009 calling upon the petitioner to pay the arrears of loan to the 4th respondent Bank and consequently, for a direction to the 3rd and 4th respondents to extend the benefit of "Agricultural Debt Waiver and Debt Relief Scheme, 2008" to the petitioner by waiving the entire agriculture loan dues and also to drop recovery proceedings pursuant to the decree passed in O.S.No.19/2014 on the file of Sub-Court, Thiruvarur.

2. The case of the petitioner is as follows:

The petitioner is a small farmer. He availed agricultural investment loan to the tune of Rs.2,80,000/- on 04.07.2000 from the 4th respondent Bank for purchasing tractor to improve the cultivation of the land. Due to severe drought, the petitioner was unable to repay the entire instalments, even though, he paid a sum of Rs.1,73,700/-. The first respondent framed a beneficiary Scheme to the poor farmers under the name "Agriculture Debt Waiver and Debt Relief Scheme, 2008". The petitioner, under the said Scheme, is entitled to get his agricultural loan waived. However, the 4th respondent issued the impugned proceedings stating that the petitioner was given only 25% rebate in the entire loan amount as per the Agricultural Debt Waiver Scheme, 2008. A suit in O.S.No.19/2014 was filed by the respondent Bank against the petitioner to recover the loan and the said suit was decreed. Therefore, the present writ petition is filed seeking for the above said relief.

3. The respondents 3 and 4 filed a counter disputing the above claim of the petitioner. It is stated in the counter affidavit that the petitioner and his brother availed agricultural term loan by mortgaging the property measuring 7 acres and 9-1/3 cents of wet lands and the said loan amount was repayable in instalments. They defaulted in making the repayment. The first respondent introduced Agricultural and Debt Relief Scheme 2008 providing one time settlement to farmers and the said Scheme introduced waiver of 25% of loan to farmers holding more than 5 acres of land provided that the balance of 75% of the amount is paid in not more than three instalments commencing from 30.09.2008 and ending on 30.06.2009. The petitioner did not avail the benefit of the said Scheme by paying the first instalment or other instalments. Therefore, the impugned notice was issued on 25.06.2009 and a suit in O.S.No.19/2014 on the file of Sub-Court,

Thiruvarur, was also filed for recovery of a sum of Rs.7,02,944/- from the petitioner and his brother. The suit was decreed on 23.01.2016. The applicability of the above said Scheme was raised as additional issue in the said suit and a finding was rendered to the effect that the said Scheme does not enure to the petitioner to claim the benefit of loan waiver. The said finding was based on Ex.B3, the impugned order herein. The said judgment and decree have not been appealed against.

4. Learned counsel for the petitioner vehemently contended that even though the petitioner suffered a decree and did not challenged the same before the Appellate Court, it is the bounden duty of the respondent bank to consider the entire waiver of the loan amount by applying the said Scheme to the petitioner. He further submitted that similarly situated persons were given the benefit of full waiver whereas the petitioner was not given.

5. On the other hand, the learned counsel for the respondent Bank, after reiterating the contentions raised in the counter affidavit submitted that the very writ petition filed after a period of eight years from the date of the impugned order is liable to be dismissed on the ground of laches. He further submitted that the very same issue was raised by the petitioner in the Civil Court in O.S.No.19/2014 and the same was rejected by the Civil Court by passing the judgment and decree in favour of the respondent Bank. As the judgment and decree of the Civil Court have become conclusive, final and binding between the parties, the petitioner is not entitled to raise the very same issue again before this Court.

6. Heard both sides.

7. There is no dispute to the fact that the petitioner has availed agricultural loan from the 4th respondent Bank. It is also not in dispute that the petitioner has committed default in making repayment periodically. It is true that the first respondent has introduced the Scheme namely, Agriculture Debt Waiver and Debt Relief Scheme, 2008, and the petitioner seeks waiver of the entire loan amount as provided under the said Scheme. But at the same time, it is to be seen that the very same issue was raised before the Civil Court in O.S.No.19/2014 wherein the Trial Court after framing an additional issue as to whether the defendants (the petitioner and his brother) are exempted from repaying the said suit loan as per the Reserve Bank Circular, has answered the said issue in detail and found that the petitioner and his brother are not entitled to get the relief under the Agriculture Debt Waiver and Debt Relief Scheme, 2008. No doubt for arriving at such conclusion, the trial court relied on Ex.B3 which is the impugned order herein. Admittedly, the said judgment and decree of the trial Court have become final, conclusive and

binding on the parties, as no further appeal was filed by the petitioner. When such being the factual position, I do not think that the petitioner is entitled to raise the very same issue before this Court by filing the present writ petition, that too, by challenging the proceedings issued as early as in the year 2009. When the petitioner is aware of the said proceedings issued to him, he ought to have challenged the same before the appropriate forum, if he is entitled to get full loan waiver under the said Scheme and not for only 25% waiver. The petitioner has failed to do so. On the other hand, he kept quite all these years and chosen to file the present writ petition only after receiving a notice in the execution proceedings. to execute the decree passed in O.S.No.19/2014. Therefore, I find no merits in the writ petition to consider the claim of the petitioner. However, it is open to the petitioner to approach the respondent Bank by giving some proposal for settling the dispute. It is also open to the petitioner to file an appeal against the judgment and decree passed by the Civil Court before the Appellate Court and raise all the contentions therein as raised in this writ petition. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary,Government of India,
Department of Financial services,
Ministry of Finance, Jeevan Deep Bulding,
Parliamentary Street,
New Delhi - 110 001.

2. The Regional Director,
Reserve bank of India,
Tamilnadu Region, No.16, Rajaji Salai,
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4. The Branch Manager,
   Indian Overseas Bank,
   Manavalanallur Branch,
   Kadavasal Taluk,
   Thiruvarur District.

+1cc to Mr.F.B.Benjamin, Advocate, S.R.No.14864

W.P.No.11574 of 2017

RRK(13/03/2018)