IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2019

Pronounced on: 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.17553 of 2010
and
MP.No.1 of 2010

D.R.L.(C).No.1 - Tiruchengode
Co-operative Primary Agriculture and
Rural Development Bank Limited
Rep. by its Secretary
Tiruchengode, Namakkal District. .... Petitioner

Vs

1. The Presiding Officer,
District Co-operative Tribunal /
Principal District Judge,
Namakkal.

2. The Deputy Registrar of Co-operative Societies,
Tiruchengode Circle,
Tiruchengode,
Namakkal District.

3. The Arbitrator / Extension Officer,
D.R.L.(C).No.1 - Tiruchengode
Co-operative Primary Agriculture and
Rural Development Bank Limited
Tiruchengode.

4. K.M.Kandasamy ..... Respondent

Prayer:

Writ Petition has been filed Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the judgment and decree passed in C.M.A(CS).No.75 of 2004 dated 16.07.2009 on the file of the 1st respondent quash the same.

For Petitioner : Mr.M.S.Palanisamy

For Respondent 2&3 : Mr.L.P.Shanmugasundaram, Spl.Government Pleader (Co-op)

For Respondent 4 : Mr.N.Manokaran

For Respondent 1 : Tribunal

O R D E R

The instant writ petition is for a writ of Certiorari calling for the records of judgment and decree passed in C.M.A (CS).No.75 of 2004 dated 16.07.2009, on the file of the Principal District Judge, Namakkal, acting as a Presiding Officer, District Co-operative Tribunal, whereby the Principal District Judge, Namakkal, by the impugned order allowed the appeal of the respondent setting aside the award passed against the respondent and accepting the claim of the respondent for refund of excess interest amount of Rs. 1,08,000/- which was collected by the petitioner bank with 15% interest.

2. The respondent 4 was a member of the petitioner bank. The respondent 4 applied for loan of Rs. 3,10,800/-. The respondent 4 was sanctioned a loan of Rs. 2,18,010/- on mortgage of immovable properties. The respondent 4 accepted to pay interest 15% per annum and also to pay 16 1/2 interest per annum as default interest. The respondent 4 repaid a sum of Rs. 1,39,000/- between 01.11.1993 to 30.01.2001. The petitioner also paid a sum of Rs.5,75,000/- as interest to the bank. The petitioner bank by letter dated 26.02.2011, directed the petitioner to pay a sum of Rs.5,40,140/- on or before 31.02.2001, failing which, action will be taken against the petitioner on the properties mortgaged to the bank. The petitioner paid the amount of Rs.5,45,000/- on 31.01.2001 and 07.02.2001.

3. It is stated that the Government issued G.O.(D) No.68, Cooperation Food and Consumer Protection (CC1) Department, Chennai-9, dated 28.03.2002, and issued the orders for waiver of penal interest on the overdue principle as on 30.06.2000 and also for the amount which became due for payment between 01.07.2000 to 31.08.2001. The relevant order of the scheme reads as under:-

> "ORDER
>
> In the Government order first read above, orders were issued that borrowers who availed for short term/ medium term and medium term converted loans in

Cooperative banks for Agriculture and allied activities, will be given a concession of waiver of interest and penal interest, provided the borrowers repay before 30.11.2001, the overdue principal as on 30.06.2000 and also the amounts which become due for payment during the period from 1.7.2000 to 31.8.2001. Under this scheme, 6,11,193 farmers have availed themselves of this facility amounting to Rs.226.5 Crores.

2) The Government have now received several representations that some relief should be provided to the farmers and borrowers who were not covered by the above scheme.

3. The Government have considered the representations and direct that a "One Time Settlement" scheme be implemented by the Registrar of Cooperative Societies as per the guidelines appended to this order to provide relief to the borrowers from the Cooperative sectors both urban and rural and also to facilitate the recovery of long pending overdues.

4.The waiver that is allowed by the bank in terms of guidelines will have to be on their own strength and no financial support from Government, Reserve Bank of India or National Bank for Agriculture and Rural Development would be extended.

5. The scheme will come in to operation immediately and will be inforce till 30.06.2002.

6. The Registrar of Cooperative Societies is requested to issue necessary operational guidelines to the filed staff on the implementation of this scheme."

4. Guidelines were also issued as to which of the persons would not be entitled to the scheme. They reads as under:-

"OPERATIONAL GUIDELINES TO IMPLEMENT ONE TIME SETTLEMENT SCHEME FOR RECOVERY OF LONG PENDING OVERDUES TO PCARD BANKS AND TNCSARD BANK

The One Time Settlement scheme will provide relief to borrowers of the PCARDBanks and TNSARD Bank while facilitating the recovery of long pending overdues. The scheme shall be implemented in Tamil Nadu Cooperative State Agriculture and Rural Development Bank and Primary Cooperative Agriculture and Rural Development Banks.

2. COVERAGE

i) All accounts having NBAs (either part of/entire loan

availed or loan installment(s) as the case maybe) which became doubtful or less assets as on 31st March 1993.

ii) All eligible NPA accounts ac on 3 1st March 1998 where the security has been bid by the bank in auction but not disposed so far.

The following categories of loans will not be covered by the scheme in any of the Banks mentioned above:-

(a) Cases of wilful default, fraud and malfeasance
(b) Loans with tie-up arrangements for recovery (e.g. loans availed by salary earners)
(c) Loans availed of or guaranteed by Directors or by close relatives of Directors or by firms/ companies/ institutions in which the Directors are interested or by ex-Di rector of respective cooperative institutions.
(d) Loans guaranteed by Government (includes cases where Government guarantee has been invoked but not honoured by government)
(e) Loans due from Government Department/Under takings.
(f) Loans under Government directed programmes like Public Distribution System."

5. The respondent 4 claimed that the penal interest to the tune of 1,08,000/- which was paid by him should be returned back to him in terms of the same, since the amount was not repaid to the petitioner, the petitioner raised a dispute under the Cooperative Societies Act. The Registrar appointed an Arbitrator appointed under the Cooperative Societies Act. The Arbitrator by an award dated 24.01.2003, rejected the claim of respondent 4. The respondent 4 therefore filed an appeal before the Appellate Authority. The Appellate Authority who is the Principal District Judge, Namakkal, by its order dated 16.07.2009, allowed the appeal. The relevant paragraphs of the order reads as under:-

> "9. On careful perusal of the records, It is seen that the appellant, who is the member of the 3rd respondent bank applied for loan and the same was sanctioned to the tune of Rs.3, 10,000/- But inti/ally Rs,2,1C,000/- only was given to him, for which the immovable properties are mortgaged. After came to know the fact that the petitioner has filed an pauper petition in 68/1971 before the sub Court , Salem, the bank stopped the payment 6f the balance loan amount to the petitioner, further, it is seen from the records that the appellant ha3 repaid the loan amount Rs. 5,45,000/- with agreed interest rate of 15% normally and 16.1/2 % interest for default payment as per the deed of mortgage dated 26.12.1992. Further, it is seen

that the bank has given certificate for closure of debt to the appellant on 10.4.2001, and the Government had also announced the waiver of the interest and incentive schemes to the borrowers vide the Registrar of Co-operative Societies ref in Na.Ka.No. 15306/2001 ACS 1 dated 26.2.2001. Since, the 3rd respondent here in collected abnormal interest and penal interest from him the appellant is entitled to get back the excess amount collected by the 3rd respondent, because it is settled law that merely producing the account book of a company, themselves not sufficient to charge any person with liability, independent evidence must be examined to show that the entries are real and honest transactions.

10. Further, on careful reading of the above said Government order pertaining to the operational guidelines to implement one time settlement scheme for recovery of long pending overdues. It is state that which categories of loans will be covered by the scheme are, 1) All accounts having non-performing Assets (either part of /entire loan availed or loan installments as the case may be) which became doubtful or loss assets as on 31st March 1998, ii) All eligible Non perforating Assests accounts as on 31st March 1998 where the security has been bid by the bank in auction but not disposed so far. So, It is clear from the Government order that the appellant which was announced by the Government to the borrowers. In the Year 2002, Further, it is made clear from the 2nd page of the above said G,0 Under settlement formula that the waiver of penal interest and freezing of outstanding balance in the account inclusive of interest as on 3 1.3^90 shall form the basis of the settlement.

11. It is the contention of the learned counsel for the appellant that though the 3rd respondent ha3 produced the bank ledgers, receipt book3, accounts pertaining to the rate of interest for the amount of Ks*6,83,000/- which was paid by the appellant, before the Arbitrator and the same was marked, he has not taken steps to examine individual witness to prove the same. It is enunciated in the decision in 2001 M.L.J page 63 and 2001 M.L.Jpage 432 the entries made in the documents of income add expenditure have to be proved by the individual witnesses. So, in the absence of the above said witnesses, this court 13 of the

considered view that the accounts are not proved by the respondent aide with clinching evidences, and hence, the impugned order is liable to be set aside and the points in this appeal are accordingly decided in favour of the appellants in this appeal.

12. So, I perused the seasons and findings of the Award passed by the 2nd respondent here in in A. R. C No.493/ 2001-20Q2, dated 24.1.2003, carefully. In view of the above discussions, the reasons and findings of the 2nd respondent is not correct one. So, I hold that the appellant is entitled to get the excess amount paid by him as panel interest and the respondents are directed to effect the Government order of one Time settlement to the Appellant in the interest of justice. Since the loan was obtained by the appellant in the year 1993."

It is this order which is under challenge in the present writ petition.

6. It is the contention of the petitioner that, the respondent 4 is not entitled to the benefits of the waiver scheme. The learned counsel for the petitioner would state that, the respondent 4, had suppressed the fact while obtaining the loan that he had been adjudged as insolvent in proceeding initiated against him by an order dated 02.07.1983. According to the petitioner this fact has not denied. The counsel for the petitioner therefore states that, once the petitioner has been insolvent and he had not revealed this fact, then respondent 4 had taken a loan with unclean hands and had obtained the loan by fraud and malfeasance which would dis entitle the benefit of the waiver scheme.

7. The learned counsel for the respondent 4 would state that, even though the petitioner had been adjudged as an insolvent, he filed an appeal and the order of insolvency was set aside by an order dated 26.10.1976. It is therefore submitted by the respondent 4 that, once the order declaring the petitioner was insolvent and it has been set aside by the Appellate Authority, there is no question of suppression, fraud and malfeasance.

8. The learned counsel for the respondent has also strongly relied on the following averments made in the written statement:-

"4. The averments in paras IX, X and XI are all false. The Bank has not acted arbitrately. It has followed all rules and regulations. It has not violated any order or circular. No wrong calculation is made. The Bank has not collected any excess amount from the palintiff. The calculation given by the plaintiff is wrong. The plaintiff is now entitled to recover an amount of Rs.1,08,000/- with interest at 18% with costs from the Bank."

(emphasis supplied)

This contention of respondent 4 cannot be accepted. A perusal of the entire written statement would show that, it is the stand of the bank is that the respondent 4 is not entitled to the scheme. The ward now is only a typographical error and it will be read as "Not".

9. A perusal of the record would show that the petitioner is entitle to the benefit of the scheme. The amount was paid to the bank on 07.02.2001. The fact which is not denied. G.O.(D) No.68, Cooperation Food and Consumer Protection (CC1) Department, Chennai-9, dated 28.03.2002, extracted supra gives benefit to those borrowers who have paid that liability that became due for payment during the period 01.07.2000 to 31.08.2001. The amount has been repaid to the bank, the Government order in G.O.(D) No.68, Cooperation Food and Consumer Protection (CC1) Department, Chennai-9, dated 28.03.2002, makes that respondent 4 is liable to get back the penal interest. The facts as recorded by the Principal District Judge, quoted supra therefore does not warrant any interference.

10. The other contention of the petitioner that the loan given was obtained by fraud cannot be accepted. The insolvency proceedings has ended in favour of the respondent. The order adjudging the petitioner as insolvent has been set aside in appeal. The petitioner therefore did not suppress any fact to the petitioner bank. The fact that there is an Appellate order dated 26.10.1976 annulling the order dated 22.03.1973 which adjudged the petitioner as insolvent is not denied by the petitioner. The contention raised by the bank cannot be accepted. The respondent 4 is now 87 years of age and has been fighting this petition from 2001. The bank has not been fair in taking the stand. The writ petition therefore deserves to be dismissed with costs. In the result, the writ petition is dismissed with the cost of Rs.10,000/-. The petitioners are directed to pay back the amount due to the 4th respondent within 8 weeks from the date of receipt of the copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

Pkn

To

1. The Presiding Officer,
   District Co-operative Tribunal /
   Principal District Judge,
   Namakkal.

2. The Deputy Registrar of Co-operative Societies,
   Tiruchengode Circle,
   Tiruchengode,
   Namakkal District.

3. The Arbitrator / Extension Officer,
   D.R.L.(C).No.1 - Tiruchengode
   Co-operative Primary Agriculture and
   Rural Development Bank Limited
   Tiruchengode.

+1cc to Mr.M.S.Palanisamy, Advocate SR.No.51571

+1cc to Mr.N.Manokaran, Advocate SR.No.51443

+1cc to Special Government Pleader (CO.OP)SR.No.52358

WP.No.17553 of 2010

PM(CO)
GMY(14/08/2019)