IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2019

CORAM

THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.27241 of 2017
and W.M.P.No.29093 of 2017

1. L.Nandakumar
2. L.Sivakumar
3. R.Sulekha
4. L.Radhika
5. P.Renuka ... Petitioners

Vs.

1. The Debts Recovery Appellate Tribunal
4th Floor - Indian Bank Circle Office
No.55, Ethiraj Salai, Egmore,
Chennai - 600 008.

2. The Debts Recovery Tribunal - II
Spencer Towers - IV Floor
No.770-A, Anna Salai
Chennai - 600 002.

3. Indian Bank
T.Nagar Branch
(Rep. by its Asst. General Manager)
Circle Office, Chennai South
Chennai - 600 008. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent which culminated in the impugned order dated 18.08.2017 in R.A.No.28/2014 and quash the same.

For Petitioners : Mr.OM.Prakash
Senior Counsel
For Mrs.A.S.Kailasam and Associates

For R3 : Mr.Rajendran Raghavan

R1 and R2 - Tribunal

ORDER

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

This Writ Petition has been filed to call for the records of the 1st respondent which culminated in the impugned order dated 18.08.2017 in R.A.No.28/2014 and to quash the same.

2. The brief facts leading to the present case are that the petitioners purchased 134 acres in Karepakkam Village, Sathyavedu Taluk, Chithoor District, Andhra Pradesh, in the year 1994, from the compensation amount received by the petitioners for their lands acquired by the Government for Ennore Thermal Project. The said lands were not cultivable at the time of purchase, hence, the petitioners spent substantial amount in levelling the land, and finally, planted Mango saplings in the year 1995. Thereafter, the petitioners wanted to undertake agricultural activity on a large scale, and hence, approached the 3rd respondent bank for term loan. The 3rd respondent bank, after satisfying with the project, sanctioned a sum of

Rs.22 lakhs as term loan, in which, the petitioners availed only a sum of Rs.20 lakhs, by offering various documents, including the guarantee of due repayment of the loan.

3. The petitioners would further contend that since there was failure of monsoon as well as failure of intercrop, they could not repay the loan amount availed from the 3rd respondent bank. Hence, the 3rd respondent bank filed O.A.No.195 of 2004 on the file of DRT-I, Chennai, which was subsequently transferred to DRT-II, Chennai and renumbered as O.A.No.342 of 2007, claiming an amount of Rs.51,58,725/- with 18% interest with monthly rests on the said amount, from the date of application, till the date of realisation together with penal interest.

4. The petitioners would also contend that pending O.A, two schemes came to be published by the Government of India through the Reserve Bank of India and NABARD. Pursuant to which, the said schemes were sought to be invoked by the petitioners, as the schemes covered Chithoor district also, where, the petitioners purchased 134 acres of agricultural land. Notwithstanding the stand taken by the petitioners, DRT-II ordered issuance of recovery certificate, by its order dated 25.10.2011. Hence, the petitioners, left with no other

alternative, approached DRAT, the 1st respondent herein, by filing an appeal under the SARFAESI Act.

5. The petitioners would further contend that in accordance with Section 21 of the DRT Act, since a deposit has to be made on filing an appeal, they filed I.A.No.16 of 2012, for waiver of the said deposit, but, it was dismissed by the 1st respondent Tribunal. Thereafter, the said order came to be challenged by the petitioners in W.P.No.34548 of 2013 before this Court, and this Court, by order dated 28.12.2013, permitted the petitioners to deposit a sum of Rs.20 lakhs as pre-deposit, modifying the order of the 1st respondent Tribunal. Subsequently, the said amount was duly deposited and thus, the main appeal was numbered as R.A.No.28 of 2014. However, the DRAT, the 1st respondent herein, by order dated 18.08.2017, confirmed the order passed by the 2nd respondent Tribunal, but, modified the interest to 12% per annum. Aggrieved by the said order, this Writ Petition has been filed.

6. Denying the allegations of the petitioners, the 3rd respondent has filed a counter, by contending that on 06.09.1996 the petitioners, availed an Agricultural Medium Term Loan for a sum of Rs.22 lakhs with the Specialised Agricultural Finance Branch at Royapettah with a

half yearly repayments from then. After availing the said loan, the petitioners were in default of payment, and hence, the loan account was restructured and repayment was rescheduled during September 2001, on the request of the petitioners. Despite restructuring, the petitioners continued to be in default of payment, and hence, a demand notice, demanding the dues, was issued by the respondent bank on 26.05.2004. Even after receiving the demand notice, the petitioners did not come forward to settle the dues, and therefore, the 3rd respondent bank filed O.A.No.195 of 2004 before DRT-I, seeking recovery of a sum of Rs.51,58,725/- with interest at 18% per annum, with monthly rests from the date of application till the date of realisation with costs.

7. The 3rd respondent would further contend that the said O.A. was renumbered as O.A.No.342 of 2007 and in the course of the proceedings before DRT-II, the petitioners raised a plea to consider their loan under the Agri Debt Relief Scheme, which came to be introduced by the Government of India through the Reserve Bank of India in 2006, for the benefit of poor and distressed farmers. But, the said plea was rejected by the respondent bank, as the petitioners do not come under the category of distressed farmers. Apart from that, the 3rd respondent would contend that the benefit under the Agri

scheme cannot be applicable to the petitioners, as the petitioners themselves have waived the benefit and have not applied for the same at the first instance, and further, the other relief in the scheme, is also not applicable to the petitioners, as the petitioners owned a very large extent of land, whereas, the scheme is only for small and marginal farmers. Moreover, the 3rd respondent would contend that only after discussing the issues in various aspects, including the applicability of the said scheme, DRT-II as well as DRAT have passed Speaking Orders, and hence, sought for dismissal of this Writ Petition.

8. Heard the learned counsel for the petitioners and the learned counsel for the 3rd respondent, and perused the materials available on record.

9. On perusal of the entire documents produced by either parties, it could be seen from the order passed by DRT-II in O.A.No.342 of 2007 dated 25.10.2011 and DRAT in R.A.No.28 of 2014 dated 18.08.2017 both the Tribunals have concurrently held that the benefit of the Waiver Schemes, cannot be applied to the petitioners, as the petitioners did not approach the respondent bank for exercising such waiver to them. In fact, the Appellate Tribunal, while confirming the order of DRT-II, held that the petitioners, without making any

repayment for a continuous period of ten years, then, in the year 2006, cannot come and blame the bank alone if this scheme was not noticed by them, as they have missed the chance for applying under the scheme in time.

10. The petitioners have filed an additional typed set, enclosing the Statement of Accounts for the period from 1997 to 2004, and it is not denied by the 3rd respondent.

11. On careful perusal of the transactions sheet filed by the petitioners, it could be seen that the disbursement of loan of 22 lakhs was not made at the same point of time, but, it was periodically done by the respondent bank commencing from 1997 till 2004. It would be appropriate for us to see the applicability of the scheme. The relief scheme was notified by the Government of India on 18.10.2006. As far as the State of Andhra Pradesh is concerned, 16 districts were included and covered under the scheme, which includes Chithoor district also, where, 134 acres of Mango Farm of the petitioners is located. However, Government of India have issued certain guidelines to all the banks, to apply the scheme for the debt stressed farmers, who had secured loan for their agricultural purpose. The said guidelines are as follows:

"2. The component relating to Agriculture Credit includes the following:

(i) The entire interest on overdue loans as on July 01, 2006 will be waived in the above 25 affected districts and all farmers will have no past interest burden as on that date, so that they will immediately be eligible for fresh loans from the banking system.

(ii) The overdue loans of the farmers as on July 01, 2006 will be rescheduled over a period of 3-5 years with a one-year moratorium.

(iii) A credit flow of Rs.13,817.78 crore, Rs.3,076.20 crore and Rs.1,945.07 crore will be ensured in the above debt stressed districts of Andhra Pradesh, Karnataka and Kerala respectively in 2006-07.

3. The burden of waiver of overdue interest will be shared equally by the State and Central Governments. While apportioning the overdue interest as above, due care will be taken to offset releases if any, already made by the State Government on this Court.

4. You are, therefore, advised to ensure that all the farmers' loan accounts in the specified districts, which are overdue as on July 01, 2006, are rescheduled on the lines of the package and the interest thereon (as on July 01, 2006) is fully waived. Fresh finance may be ensured to such farmers. The total amount of credit envisaged to be released by banks in the three States will be allocated by the respective SLBC Convenors among the banks functioning in the districts.

5. The amount of interest waived (State wise) may be advised to the SLBC Convenor Bank of the respective State and to us in a consolidated manner in the enclosed format (Annex-I) in order to enable us to reimburse the same. While the branches may provide information to the Controlling / Head Office as per Annex-III, the latter may maintain branch-wise information in the format given in Annex-II for the purpose of RBI Inspection and Audit.

6. The progress in the implementation of the package will be monitored at the district level through the DLCC forum and at the State level through the SLBC. Besides, a special team from NABARD and lead bank shall be deputed to ensure timely restructuring/reschedulement of the loan accounts to enable early flow of fresh credit.

12. The Reserve Bank of India, by circular dated 18.12.2006, has given their comments to the queries raised by the bank regarding the above notification dated 18.10.2006. As far as the Agricultural

Debt Waiver and Debt Relief Scheme, 2008, are concerned, it would be significant to refer the definitions at clause 3.5, 3.6 and 3.7 in the said scheme, which are as follows:-

3.5. 'Marginal Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land up to 1 hectare (2.5 acres).

3.6. 'Small Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 1 hectare and up to 2 hectares (5 acres).

3.7. 'Other Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 2 hectares (more than 5 acres).

13. As far as the eligibility of the amount is concerned, it would be significant to refer clause 4 in the above said scheme, which is 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;

(ii) restructured and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government, whether overdue or not; and

(iii) restructured and rescheduled in the normal course up to March 31, 2007 as per applicable RBI guidelines on account of natural calamities, whether overdue or not.

(b) in the case of an investment loan, the installments of such loan that are over due (together with applicable interest on such installments) if the loan was:

(i) disbursed up to March 31, 2007 and overdue as on December 31, 2007 and remaining unpaid until February 29, 2008;

(ii) restructured and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government; and

(iii) restructured and rescheduled in the normal course up to March 31, 2007 as per applicable RBI guidelines on account of natural calamities.

Explanation: In the case of an investment loan disbursed up to March 31, 2007 and classified as non-performing asset or suit filed account, only the installments that were overdue as on December 31, 2007 shall be the eligible amount.

4.2. The following loans shall not be included in the eligible amount:

(a) advances against pledge or hypothecation of agricultural produce other than standing crop; and

(b) agricultural finance to corporate, partnership firms, societies other than cooperative credit institutions (referred to in para 3.4), and any similar institution.

4.3. Nothing contained in this Scheme shall apply to any loan disbursed by a lending institution prior to March 31, 1997.

14. From a careful reading of the above provisions extracted from the scheme, it could be seen that the Debt Agricultural Scheme is applicable to 25 districts across the States of Andhra Pradesh, Karnataka and Kerala, and the same shall apply to marginal farmers, small farmers and other farmers. The main condition as stated in the said scheme is that the scheme shall not apply to any loan disbursed by a lending institution prior to 31.03.1997. As far as the other farmers is concerned, who cultivates (as owner or tenant or share cropper) agricultural land of more than 2 hectares, the scheme shall apply to them. The scheme does not differentiate whether the farmers are cultivating for the purpose of export or any other purpose. The scheme shall not apply to any loan disbursed by a lending institution prior to 31.03.1997, as the clause 4.3 in the scheme, says nothing contained in the scheme shall apply to any loan disbursed by a lending institution prior to March 31, 1997.

15. On perusal of the order passed by DRT-II as well as DRAT, both the Tribunals have come to the conclusion that the Debt Agricultural Scheme shall not be applied to the petitioners herein, as the loan sanctioned by the 3rd respondent bank was as early as 1996, whereas, a deadline has been fixed that the scheme shall not apply to

any loan disbursed prior to 31.03.1997. It would be appropriate to refer the transactions sheet filed by the petitioners, which categorically shows the disbursement of the agricultural loan to the petitioners loan between the period 1996 and 2001. The loan disbursed by the respondent bank between the said period, has not been done at the same point of time, but done in a phased manner. In fact, the petitioners were given a moratorium period of 5 years to repay the said loan thereafter.

16. Comparing the applicability of the said scheme and the bank statement filed by the petitioners, it could be seen that the Agricultural Debt Waiver and Debt Relief Scheme, 2008, is applicable to the petitioners and the bank ought to have applied the scheme to the petitioners, by extending the waiver protection, and thereby, rescheduling the loan of the petitioners. Hence, the assertion made by the bank that the petitioners did not avail the scheme at the proper time, cannot be accepted by this Court. Further, it is seen from the orders passed by DRT-II as well as DRAT, both the Tribunals have committed an apparent error while passing the orders and held against the scheme, being applied to the petitioners.

17. On perusal of the letters dated 30.10.2009, 20.11.2009 and 19.12.2009 sent by the petitioners, claiming relief under the Scheme, 2006, it cannot be concluded that the petitioners have approached the bank belatedly as held by DRAT, while confirming the order passed by DRT-II.

18. The relief schemes announced by Government of India through Reserve Bank of India, especially to the farmers, are in the interest of protecting the farmers from the debt owing for the reasons of natural calamities like drought famine, excessive of flood etc. As far as our country is concerned, 70% of the lands are farm lands and most of the farmers, especially the farmers who avail loan from the bank, are not aware of the schemes announced by the Government of India. Hence, it is the paramount duty of the banks who extend loans to the farmers, to make applicable the beneficial schemes announced by the Government , as and when, such schemes are brought to the notice of the banks. The banks cannot wash away their hands, merely because, the farmers have not approached the bank, seeking applicability of the relief schemes. It is the duty of the banks to extend the benefits to the farmers, who have availed loan from them, as most of the farmers are illiterate even today. The banks cannot expect the farmers to be aware

of the schemes and approach the bank for applying or extending the scheme.

19. On a conjoined reading of various clauses as discussed in the earlier paragraphs of the scheme, the benefit of the scheme ought to have been extended to the petitioners, and thereafter, rescheduling the petitioners debt by the 3rd respondent bank. Moreover, the Tribunals, DRT-II as well as DRAT have committed a grave error while passing the order, without applying the benefit of the scheme to the petitioners.

20. Under these circumstances, the order passed by DRAT, confirming the order of DRT-II, deserves to be set aside, and thus, the same is hereby set aside. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.K.J.,) (V.B.S.J.,)

11.01.2019

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Index : yes/no
Internet : yes/no
Speaking Order/Non-Speaking Order

To

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