

16.12.2020.
Item no. 24.
Court No.13
ap

**W.P.A. No. 10312 of 2020
(Through Video Conference)**

**Subhendu Saha & Anr.
Versus
The State of West Bengal & Ors.**

Mr. Siddhartha Banerjee,
Mr. Biswajit Tiwari.

...For the petitioners.

Mr. Pradip Kr. Roy, Standing Counsel,
Ms. Shraboni Sarkar.

...For the State.

The writ petitioners challenge an Award dated 16th October, 2020 passed against by the Assistant Registrar of Co-operative Societies, Malda Range at the instance of and for the benefit of the Malda Co-operative Agriculture Rural Development Bank Limited.

The Award was passed under Section 139 of the West Bengal Co-operative Societies Act, 2006.

The brief background of the case, as evident from the writ petition itself, is that the loan account of the petitioners commenced sometime in the year 2008. The Bank was liberal enough to allow an overdraft facility of Rs.10,00,000/- even without any security. The petitioners thereafter pledged diverse deposit accounts in favour of the Bank.

Repeated notices of demands were issued to the petitioners by the Bank, inter alia, in April, 2016,

August, 2016, February, 2017 and August, 2019 and finally on 14th October, 2019. At every stage and in reply to every notice, the petitioners admitted their liabilities. They have repeatedly asked the Bank to adjust the existing fixed deposit account to partly square of the dues of the Bank. The Bank found the same to be grossly insufficient to meet even the principal outstanding dues. The Bank also requested the borrower/petitioners to put in some immovable properties as security, which they could not.

The total outstanding as on October, 2019 was about Rs.25,00,000/- towards principal and Rs.16,500/- towards interest. A detailed 18 page statement of accounts has been annexed to the writ application clearly indicating that the petitioners were at all material times aware of the transactions and outstandings in their loan accounts. Admittedly, the petitioners were in the cement trading business.

Counsel for the petitioners, Mr. Siddhartha Banerjee assisted by Mr. Biswajit Tiwari has vehemently and vociferously argued that the impugned Award does not contain any reasons whatsoever. He also argued that he did not get any opportunity to put forward his defence. He further submitted that he had repeatedly asked for waiver of interest and also argued that the Bank may have compounded the interest that accrued in the account.

Mr. Banerjee further argued that before suffering a decree or an Award, he is entitled to put forward his defence or be heard and that there is blatant violation of the natural justice. Since the Award is non-speaking it is not sustainable.

I have heard the Counsel for the petitioners and Counsel for the State at length.

The Society although served has not been represented.

This Court notes that the Award was passed under Section 139 (Chapter XI) of the West Bengal Co-operative Societies Act, 2006 thereof. Section 139 of the Act 2006 is set out hereinbelow:

“139. Power to direct payment of dues.
– Notwithstanding anything contained in Chapter XI, the Registrar or any person empowered under the rules may, of his own motion or on the written requisition of a co-operative society or the financing bank for the recovery of any sum due by a defaulting member (including a deceased member) of a co-operative society, after such inquiry as he may consider necessary or expedient, make an award directing such member or his surety or the successors, or a legal heir of a deceased person, who may or may not be a member of the co-operative society, to make payment of the amount found to be due.”

It is clear and evident from a plain reading of that Section that the procedure prescribed thereunder is summary in nature. The West Bengal Co-operative

Societies Act, 2006 is a complete Code and a special Act. It is meant to, inter alia, govern the Co-operative bodies like Housing, Credit, Markets, Banks etc. particularly, as in the instant case, Agricultural Credit Entities. The scope of operation and beneficiaries of such Bank facilities are mostly in semi-urban and rural areas and meant for small and medium farmers and entrepreneurs. The Act facilitates small banks to function in rural and semi-urban areas and extend credit and loans to this marginally small and medium enterprises and/or individuals.

Given the above specific objects of the 2006 Act, the summary procedure conceived of under Section 139 is in harmony with the objects sought to be achieved by such enactment. The said Section empowers the Registrar to pass Awards and orders of payment at the instance of creditor and even suo motu.

It is now well settled that even a notice of proceeding and consideration of a reply (albeit a limited procedure), can constitute sufficient compliance of the principles of natural justice.

This Court has chosen to express as above, to justify the conclusion proposed and to address the arguments advanced by the Counsel for the petitioners across the bar even though the legality of Section 139 has not been challenged in the writ application.

It appears from the records that the Assistant Registrar of Co-operative Societies, Malda Range has issued a notice to the petitioners on 29th September, 2020 and had called for a hearing on 16th October, 2020 at 12:00 Noon.

The petitioners submitted a reply in writing to such notice raising feasible defence. It could easily be inferred from a plain reading of the Reply dated 15th October, 2020 issued by the petitioners that they have admitted the liability of the Bank and have only pleaded for concession.

The point raised at paragraph 4 of the reply i.e. as to whether the interest charged by the Bank was simple or compounded could be regarded as a defence merely for the sake of defence. The statement of accounts annexed to the writ petition, in no uncertain terms, indicates the accrued interest which in turn would clearly indicate as to the nature of interest charged and rate at which the same was applied.

It, therefore, cannot be said that the petitioners were condemned unheard. Section 139 by itself does not mandate or require the Assistant Registrar of Co-operative Societies, Malda Range to give detailed reasons or any reason for that matter for arriving at the Award that he has passed.

Given the nature, object and purpose of the Act, as discussed to a limited extent hereinabove, this

Court is of the clear view that the Award dated 16th October, 2020 cannot be faulted.

The luxury of a detailed hearing over a period of time and following the complicated procedural rigmarole cannot be factored into Section 139 of the West Bengal Co-operative Societies Act, 2006. The same would defeat the object and purpose of the Act.

It is, however, made clear that the Bank notwithstanding the aforesaid Award may consider, without interrupting its execution procedure of the Award, any concession it may want to afford the writ petitioners, if its recovery process is expedited and that too strictly in terms of the prescribed Rules therefor.

The impugned Award is, therefore, not interfered with. The instant writ petition must fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order on usual undertakings.

(Rajasekhar Mantha, J.)