IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 23238 of 2012

Rabindranath Mohapatra .... ***Petitioner***

Mr. Abinash Routray, Advocate

-versus-

United Commercial Bank & others .... ***Opp.parties***

Mr. B.N. Udgata, Advocate

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER
21.11.2022
Hybrid Mode

Order No.

14. **1**. The petitioner availed a loan on 1.4.2004 in terms of the scheme floated by the O.P.-UCO Bank through Begunia Branch in the district of Khurda vide a scheme namely, UCO Hirak Jayanti Krishi Yojana, a limit of Rs.4,00,000/- to purchase agricultural equipments, i.e., farming tractor with trailor by depositing the title deeds creating an equitable mortgage on 06.01.2014 of his property (land and building) in mouza-Shankarpur, SRO-Bolagarh, khata no.353 (Hal Khata no.415) plot no.675 (Hal plot no.683) measuring an Ac.0.170 dec.

On failure to service the loan and pay the instalments, the Bank issued notice under section 13(2) of the SARFAESI Act dated 27.11.2011 seeking payment of Rs.5,97,608/- as outstanding as on 10.11.2011.

The petitioner by filing the writ petition prays for a direction for grant of benefit under the scheme, i.e. Agricultural Debt Waiver and Debt Relief Scheme, 2008 (Annexure-3).

2. We have heard at length learned counsel for the petitioner, Mr. Abinash Routray and Mr. B. N. Udgata for the O.Ps-Bank.

It is alleged in the writ petition that a sum of Rs.2 lakhs deposited before the bank has been misappropriated. To substantiate the deposits made, the petitioner has produced copies of counter foils of loan account pay in slip, collated and marked as Annuxure-2 series, which indicate the dates of deposit of Rs.32,000/- each on 7.11.2005, 19.04.2006, 25.06.2005, the 4th & 5th counter foils do not clearly indicate the dates as annexed to the writ petition. The petitioner has also annexed copy of a counter foil of deposit, slip dated 14.09.2007 indicating deposit of Rs.2,00,000/-.

It is contended by learned counsel for the petitioner referring to the rejoinder dated 21.11.2022 as well as the averments made in the writ petition that the writ petition is to be allowed by granting relief of debt waiver as per the Debt Relief Scheme (supra).

3. Upon being noticed by this Court, the contesting opposite parties-bank have filed their reply through the Branch Manager of the Begunia Branch at Begunia, denying the fact of deposit of Rs.2 lakhs on 14.09.2007, further stating that the petitioner is not entitled to get any relief. The Bank have also denied that the petitioner has ever approached them for One Time Settlement during the scheme period.

Learned counsel for the Bank submits that in terms of the Debt Waiver Scheme, 2008, the petitioner is not eligible and the Scheme has to be construed strictly as provided, and the petitioner does not qualify to get debt relief.

4. It would be apt to note here that the petitioner has not produced any statement of account obtained from the bank in the normal course of transaction or through RTI to substantiate the repayments to service the loan.

4.1. Coming to the facts of the present case, we are of the view that the petitioner having availed loan of Rs.4.00 lakhs is covered under the description of "other farmers" as per Explanation-3 to clause 3.7 of the Scheme, 2008. The said Clause 3.7 along with Explanation-3 is quoted here for reference :

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

Explanation :

1. *The classification of eligible farmers as per the above landholding criteria under the Scheme would be based on the total extent of land owned by the farmer either singly or as joint holder (in the case of an owner-farmer) or the total extent of land cultivated by the farmer (as tenant or share cropper), at the time of sanction of the loan, irrespective of any subsequent charges in ownership or possession.*

2. *In the case of borrowing by more than one farmer by pooling their landholdings, the size of the largest landholding in the pool shall be the basis for the purpose of classification of all farmers in that pools as 'marginal farmer' or 'small farmer' or 'other farmer'.*

3. *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, <u>where the principal amount exceeds Rs.50,000/-, he would be classified as 'other farmer', irrespective in both cases or the size of the land holding, if any</u>."*

4.2 However, the petitioner's loan amount is not covered under the Scheme as per paragraph-4 i.e., "Eligible amount". For reference para- 4.1 (a) & (b) is quoted herein :

"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:

<u>(a) In the case of a short-term production loan, the amount of such loan (together with applicable interest):</u>

(i) <u>disbursed up to March, 31, 2007 and overdue as on December 31, 2007 and</u>

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; ... ..."

It is not in dispute that loan account of the petitioner was not in default of instalments till 2009, therefore, no instalment remaining unpaid until 29th February, 2008 the petitioner is not covered.

4.3 As far as applicability of paragraph-6, i.e., debt relief is concerned, the said paragraph is quoted herein for reference :

"6. Debt Relief

6.1 In the case of 'other farmers', there will be a one time settlement (OTS) Scheme under which the farmer will be given a rebate of 25 per cent of the 'eligible amount' subject to the condition

> *that the farmer pays the balance of 75 per cent of the 'eligible amount'.*
>
> *Provided that in the case of revenue districts listed in Annex-I, 'other farmers' will be given OTS rebate of 25 per cent of the 'eligible amount' or Rs.20,000, whichever is higher, subject to the condition that the farmer pays the balance of the 'eligible amount'."*

As indicated above, on affidavit, the O.P.-Bank has clarified that the petitioner never approached the Bank for OTS, the petitioner though has filed rejoinder, has not denied the assertion of the Bank.

In considered view of this Court, since the petitioner though can be termed as "*other farmers*", since not covered under the definition of "*eligible amount*", would not be entitled any benefit of debt relief as the benefit is qua the portion of the eligible amount, i.e., is the unpaid arrears of instalment until February,2008.

5. Learned counsel for the petitioner relies on the decision rendered by the Hon'ble Supreme Court of India dated 17.01.2020 in ***Civil Appeal No.367 of 2020: Satpal and others v. Bank of India and others.*** The said decision of the Hon'ble Supreme Court arises out of a challenge to the decision of the National Consumer Disputes Redressal Commission in a revision filed by the Bank wherein the National Commission held that the land of the claimants of the Debt Waiver Scheme being situated in the district of Faridabad, which is not included in Annexure-1 of the Scheme to be eligible for debt waiver. It was contended before the Hon'ble Supreme Court that the claim of the appellants before the Supreme Court was not under clause-6 of the Debt Waiver Scheme but under clause-5 of the scheme, the claimants being "marginal farmers". The said contention of the appellants before the Hon'ble Supreme Court was accepted and the Hon'ble Court set aside, the order passed by the National Commission confirming the order of the State Consumer Dispute Redressal Commission confirming the view of the District Forum in allowing the complaints of the appellants thereby holding that the appellants are entitled for the benefits under Loan Waiver Scheme, 2008.

6. In our considered view, the reliance on the decision of the Hon'ble Supreme Court in ***Satpal*** (*supra*) is of no avail to the petitioner inasmuch as the petitioner is found to be ineligible as his loan account has been classified as NPA on 30.06.2010 for an outstanding amount of Rs.12,80,896.00 as on 31.07.2022, notice under section 13(2) of the SARFAESI Act was issued on 27.11.2011, notice under section 13(4) of the SARFAESI Act was issued on 23.11.2012 and the bank took symbolic possession of the secured assets, whereas the Agricultural Debt Waiver and Debt Relief Scheme, 2008 provides that to get any relief under the

Scheme, the amount disbursed upto 31.3.2007 overdue as on 31.12.2007 and remaining unpaid until 29.2.2008 will be eligible.

7. The other aspect is ***Satpal*** (*supra*), upheld the decision of the District Forum confirmed by the State Commission (SCDRC) wherein the District Forum had returned a finding of fact that the claimants/complainants therein are to be held as "small or marginal farmers" whereas in the present case, the petitioner can at best be termed as "other farmers" and the petitioner failed to apply for settlement by One Time Settlement Scheme.

In view of the above, the writ petition is dismissed being devoid of any merit. However, the petitioner shall have the liberty to pursue any remedy available under law or by approaching the Bank if so advised.

(Jaswant Singh)
Judge

(M.S.Sahoo)
Judge

21st November, 2022
Cuttack

Gs/dutta