



W.A.No.3801 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.08.2023

Delivered on: 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3801 of 2019

and

C.M.P. No.24000 of 2019

Lotus Knit Fab
represented by its
Proprietrix Mrs. K. Hemalatha

.. Appellant

Vs.

1. The Chief Secretary to
Government of Tamil Nadu,
Chief Secretariat,
Fort St. George,
Chennai.

2. The Principal Secretary,
Industries and Commerce,
Directorate of Industries and Commerce
Board of Industries and Commerce,
2nd and 3rd Floor, SIDCO Corporate Building,
Chennai-32.

3. The General Manager,
District Industries Centre,
Anuparpalayam, Pudur, Anuparpalayam, Tiruppur District.



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4. The Deputy General Manager,
Corporation Bank, Zonal Office,
Saibaba Colony, Velandipalayam,
Coimbatore.

5. The Assistant General Manager,
Corporation Bank,
Tiruppur Main Branch, Tiruppur.

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P. No.23658 of 2019 dated 13.08.2019.

For Appellant : Mr. Arokia Satheesh,
for Mr. A. Joseph Dorairaj.

For Respondents : Mrs. Geetha Thamaraiselvan, Special
Government Pleader [for R1 & R2]

Mr. S. Sethuraman [for R4 & R5]

Not Ready [for R3]

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The writ petitioner who was unsuccessful before the Writ Court in seeking issuance of a writ of certiorari to quash the order passed by the 1st and 2nd respondents has preferred the present writ appeal.



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2. The case of the appellant is that a credit facility was availed from the 4th respondent, in order to establish a unit for manufacturing knit yarn.

A tripartite agreement was entered into between the appellant, 2nd respondent and 4th respondent bank in respect of availing subsidy under the NEEDS Scheme. According to the appellant, pursuant to the said agreement, the first instalment of subsidy was released on 17.01.2018 to the tune of Rs.12,43,750/-. Within 2 months thereafter, the 2nd and 4th respondents inspected the unit and found that the unit was doing well and that even the manufacturing of knit yarn had commenced by then. Unfortunately, on 10.03.2018, because of outbreak of a fire, the entire unit was burnt down. In view of the said mishap the appellant did not even claim the further instalments of subsidy. On 22.12.2018, the 2nd respondent passed an order directing recovery of the subsidy amount disbursed to the appellant, together with interest. According to the appellant, in such contracts, the bank would take an insurance policy and debit the amount from the loan account. However, in the appellant's case, the bank never took any insurance policy. Therefore, alleging deficiency in service, the appellant filed O.S. No.458 of 2018 before the Sub Court,



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Tiruppur. In the meantime, an appeal was also preferred against the recovery order passed by the 2nd respondent. On 26.03.2019, the appeal was dismissed holding that the appellant had failed to follow the terms of the tripartite agreement dated 06.10.2017. Though a review petition was filed, there was no positive outcome. The respondents relying on the terms of tripartite agreement that the plant and machinery ought to be insured for a minimum period of 10 years and that the same had been violated by the appellant and further also contending that the appellant has not intimated the factum of shifting of the premises, and found that the appellant was liable to refund the entire subsidy amount, together with interest @19.5% p.a. The same was under challenge before the Writ Court.

3. The Writ Court dismissed the writ petition holding that the matter is purely a civil dispute and noticing that a suit had already been filed and the same was pending, the Writ Court was not the proper forum to agitate the grievances of the appellant.

4. Aggrieved by the said order of the Writ Court, the appellant has challenged the same mainly on the grounds that the Writ Court failed to notice that the appellant had not violated any terms and conditions of the



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tripartite agreement and that it was only the 4th respondent bank which was negligent and further, in so far as the allegation that the appellant had shifted the premises, the same was well within the knowledge of the respondents, who had inspected the site along with the bank officials and further it was only two different door numbers, both situate within the same compound. Further, only after the change of door number was intimated to the bank, the joint inspection by the 2nd respondent and 4th respondent bank was itself carried out.

5. We have heard Mr.Arokia Satheesh for Mr.A Joseph Dorairaj, counsel for the appellant and Mrs. Geetha Thamaraiselvam, Special Government Pleader for 1st and 2nd respondents and Mr.S.Sethuraman for 4th and 5th respondents. We have also perused the records and the order of the Writ Court.

6. The counsel reiterated their respective stands taken before the Writ Court. In addition, it was brought to our notice that the suit in O.S. No.458 of 2018 had been subsequently renumbered as COS No.46 of 2022 and the Principal District Judge, Tiruppur had decreed the suit in favour of the appellant, directing the 4th respondent bank to pay Rs.88,99,463.75/-,



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together with interest at the rate of 12% p.a. from the date of suit, till the date of realization, in and by a judgment and decree dated 31.07.2023. The counsel for the 4th respondent bank however contended that being aggrieved by the said judgment and decree, the bank is intending to prefer an appeal and that in due course an appeal would be filed against the said judgment and decree dated 31.07.2023.

7. We find that the contentions that had been taken in support of the Writ petition by the appellant and also the contentions that have been taken up by the respondents before us and in the Writ petition have all been agitated before the competent Civil Court in COS.No 46 of 2022 on the file of the Principal District Judge, Tiruppur. No doubt the suit is only between the appellant and the Bank (4th and 5th respondents). However, the Principal District Judge has elaborately considered the very same contentious issues in the said suit and ultimately found that the Bank had failed to discharge its obligation which had resulted in the appellant suffering huge monetary losses. As rightly contended by the Counsel for the Bank, Mr.S.Sethuraman, the said judgement is subject to any appeal that may be filed by the Bank. However, be that as it may as on date there



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is a judgment of a competent Civil Court, that too rendered after an elaborate trial and touching the same issues that are also subject matter of this writ appeal.

8. Taking note of the subsequent event, namely, the decree passed in COS No.46 of 2022 on 31.07.2023, pending this writ appeal, we deem it fit to pass the following judgment:-

(i) The appellant shall make a fresh representation to the 2nd respondent to reconsider the order impugned in the writ petition on the ground that the competent Civil Court has held that the appellant is not guilty of any breach, which was the main ground on which the impugned order directing refund came to be passed and was also confirmed on an appeal.

(ii) On such representation being made by the appellant within 4 weeks from the date of receipt of a copy of this order, the 2nd respondent shall serve notice to the 4th and 5th respondents along with a copy of the representation within 2 weeks thereafter, and

(iii) On such objections being furnished or filed by the Bank (4th and 5th Respondents), the 2nd respondent may afford a personal hearing to



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the appellant and bank officials and fix a date for enquiry regarding refund of subsidy. Such an enquiry shall be completed within a period of 8 weeks thereafter, following the due process of law and adhering to principles of natural justice.

9. In fine, the writ appeal is partly allowed with the above directions. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)

25.09.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
mjs

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs)

Pre-delivery judgment in
W.A.No.3801 of 2019

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