BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7572 of 2012
and
M.P.(MD)No.1 of 2012

T.Karnan ... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
170, E.V.R.High Road,
Chennai-600 010.

2.The Joint Registrar / Official Liquidator,
Madurai Urban Co-operative Bank (Liquidated),
32, Naicker New Street,
Madurai-625 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No. 14525/2012 Nava 3 dated 10.04.2012 and the consequential order passed by the 2nd respondent in his proceedings dated 08.05.2012 and quash the same as illegal and consequently direct the 2nd respondent to settle the loan account NO. SL 173 of the petitioner under Special Loan Settlement Scheme of the State Government.

For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1
: Mr.S.Rajasekar for R2

ORDER

Heard the learned counsel on either side.

2. The petitioner availed loan from the Madurai Urban Cooperative Bank. He committed default. It was a mortgage loan. The bank subsequently went into liquidation on 07.01.2005. In the year 2010, the Government issued G.O.(2D)No.77, dated 22.07.2009. As per the terms of the G.O, the borrower should remit 25% of the principal amount on or before 28.02.2011 and the balance amount on or before 31.12.2011. In this case, the petitioner paid a sum of Rs.10,82,598/- on 03.04.2012. It was obviously beyond the time line stipulated in the aforesaid G.O. The petitioner filed W.P.No.14682 of 2011 seeking consideration of his request vide representation dated 19.11.2011 for settling the entire loan account in terms of the payment made by him. The writ petition was disposed of on 03.01.2012 with a direction to the liquidator to consider the petitioner's request. Pursuant to the said direction, the impugned communication came to be issued informing the petitioner that the amount paid

by him had been appropriated towards the loan account. The impugned communication further states that the principal amount had been taken as Rs.9,31,219/- and interest computed at 21% was quantified at Rs.9,83,833/-. Total comes to Rs.19,15,185/-. According to the respondents, after adjusting the amount paid by the petitioner, the petitioner has to pay a further sum of Rs.17,37,790/- as on date. Challenging the said stand of the respondents, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned communication and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned standing counsel for the liquidator took me through its contents. The learned standing counsel would state that the petitioner had missed the bus. When he failed to adhere to the time line stipulated in the said G.O, he cannot take advantage of the same by making any payment subsequently. The learned counsel would point out that the stand of the respondents is in consonance with the terms and conditions of the loan agreement and that therefore, interference with the

impugned communication is not warranted. He called upon this Court to sustain the stand taken by the respondents and dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. Sections 59 & 60 of the Indian Contract Act, 1872 deal with appropriation of payment. The question for consideration is whether the petitioner had indicated the manner of appropriation. The petitioner in his representation dated 19.11.2011 and 02.04.2012 had made it clear that he is paying a sum of Rs.10,82,598/-. It would towards full and final settlement. If that was not acceptable or agreeable to the liquidator, the amount should have been returned. It would not open to the liquidator to retain the amount and appropriate the same as he deemed fit. I therefore have to hold that the respondents were not justified in appropriating the payment made by the petitioner towards interest. But no purpose will be served in directing the respondents to return the said amount to the petitioner at this point of time. It is not in dispute that new Samathan Scheme has been introduced whereby the borrowers could secure full and final settlement of their claims by paying interest at the rate of 7.5 % interest on the principal amount computed with effect from 07.01.2005.

7. The petitioner's principal amount can be rounded off as Rs.9,00,000/-. Let me apply the provisions of the subsequent communication issued vide Na.Ka.No.44342/2018/NaVa.3, dated 11.10.2018 by the Joint Registrar of Co-operative (Finance and Banking), Kilpauk, Chennai to the facts of this case. The petitioner's liability including principal and interest as of 03.04.2012 would come to Rs.14,00,000/-. The amount paid by the petitioner shall be appropriated against the said figure. Upon the petitioner paying the balance amount of Rs.3,17,402/- with interest at the rate of 7.5% thereon till the date of the payment, the account shall be treated as settled and the title document shall be returned to the petitioner.

8. The Writ Petition is disposed of on these terms. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

Index : Yes / No
Internet : Yes/ No
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To

The Registrar of Co-operative Societies,
170, E.V.R.High Road,
Chennai-600 010.

G.R.SWAMINATHAN, J.

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