BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.02.2023

Pronounced on : 03.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.862 of 2014

N.Ramdass ... Petitioner

Vs.

The bank Manager,
Union Bank of India,
Vilacheri Branch,
6/186, Main Road,
Vilacheri, Madurai 625006. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the impugned stale claim notice issued by the respondent to the petitioner dated 03.10.2013 (Jewel Loan No.654-18546, Amount Rs.1,21,721/-) quash the same and direct the respondent to return the petitioner's pledged jewels within a stipulated period to the petitioner.

For Petitioner :Mr.C.Sundaravadivel

For Respondent :Mr.R.Pandivel

ORDER

The prayer in this writ petition is to quash the impugned stale claim notice dated 03.10.2013 and to direct the respondent to return the petitioner's jewels, which were pledged.

2.The learned counsel for the petitioner would submit that the petitioner is an agriculturalist and for deepening the Well, he had obtained a jewel loan on 11.08.2006. He would further submit that during 2011, the respondent had called upon the petitioner to pay the amount along with interest and redeem the jewels, for which, the petitioner had made a reply seeking some time to make the payment. He would also submit that the Government had issued debt waiver scheme, as per which, the entire loan obtained by the petitioner is liable to be waived. He further submit that the petitioner being a small farmer, had obtained investments loan for carrying out maintenance by deepening his Wells and therefore, as per the scheme introduced by the Government, he is entitled for the debt waiver. However, originally, when the petitioner had sought for a relief of waiver, the same was not accepted by the respondent claiming that he cannot be termed as a small/marginal farmer and that the entire amount cannot be waived and he would have to make a payment of 75% of the outstanding loan amount. But, however, vide impugned notices, the petitioner had been called upon to pay the amount for redeeming the jewels, failing which, action would be initiated to recover the amount due from the petitioner. The petitioner had also caused a notice to the respondent on 08.10.2013, stating that the claim of the respondent bank is arbitrary and if the waiver scheme is rightly implemented, the petitioner would be entitled for the entire debt waiver. Hence, challenging the impugned notice, the petitioner is before this court with this writ petition.

3.Countering his arguments, Mr.R.Pandivel, learned counsel appearing on behalf of the respondent, would submit that the petitioner cannot be termed as a small/marginal farmer with regard to the extent of loan obtained. According to him, the petitioner obtained an investment loan for allied activities and therefore, only the value of the loan amount can be taken, for which, he would fall under the category of other farmers and is liable to pay the 75% of the loan amount due and only 25% of the outstanding will be the loan waiver. In spite of notices sent to the petitioner on 06.12.2019 and 15.04.2010, the petitioner had failed to avail the said benefit, which was only in force till 30.01.2010. At this length of time, the claim of the petitioner that the entire amount should be waived cannot be accepted. He would further submit that the loan that had been availed by the petitioner is only a small jewel loan, for which, the waiver could not be extended. He further relied upon the judgment of this Court in W.P.(MD).No.18280 of 2014, to submit that when offer was made to the petitioner to pay 75% of the actual outstanding, the failure on his part would disentitle him to claim the benefit under the waiver scheme. He had also relied upon the judgment of the Division Bench of this Court in W.P.Nos. 11179 to 11181 of 2017, to submit that when the individual had failed to adhere to the terms of the waiver scheme, his claim could not be considered.

4.I have considered the rival submissions made on either side.

5.It is an admitted fact that the petitioner had availed jewel loan facilities. The case of the petitioner is that it was pursuant to an agricultural loan sought for by the petitioner, the jewels were pledged to secure the loan. At the out set, the claim of the respondent/Bank that loan is a small jewel loan is liable to be rejected for the simple reason that they themselves had accepted that the petitioner was entitled to the Debt Waiver Scheme, which was introduced in the year 2008 and had called upon the petitioner to avail the said scheme. Therefore, the contention of the respondent that it is a simple jewel loan cannot be accepted.

6.The next issue to be considered is as to whether the petitioner is a small/marginal farmer or other farmer. The claim of the respondent bank is that the petitioner had borrowed money for the allied activities in agriculture and therefore, the petitioner would not be entitled for the waiver of entire amount, as he would fall under the category of other farmers. Since if the principal amount exceeds a sum of Rs.50,000/-, the borrower will have to be classified as other farmer. The case of the petitioner is that he had made borrowal for deepening the bore Well and it would not fall under allied activities, but, will fall under the direct agricultural activities.

7.For better appreciation of the relevant Agricultural Debt Waiver and Debt Relief Scheme, 2008, the relevant portions are necessary to be extracted hereunder:

3.3. 'Investment Loan' means

(a) investment credit for direct agricultural activities extended for meeting outlays relating to the replacement and maintenance of wasting assets and for capital investment designed to increase the output from the land, e.g., deepening of wells, sinking of new wells, installation of pump sets, purchase of tractor/pair of bullocks, land development and term loan for traditional and non-traditional plantations and horticulture; and

(b) investment credit for allied activities

extended for acquiring assets in respect of activities allied to agriculture e.g., dairy, poultry farming, goatery, sheep rearing, piggery, fisheries, bee-keeping, green houses and biogas.

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 loan 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 changes 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 pool 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, where the *principal amount exceeds Rs.50,000/- he would be classified as 'other farmer', irrespective in both cases of the size of the land holding, if any.*

4.Direct agricultural loan taken under the Kisan Credit Card would also be covered under this Scheme subject to these Guidelines.

5.A short-term production loan and an investment loan taken by a farmer shall be counted as two distinct loans and the Scheme will apply to the two loans separately. Likewise, in the case of a farmer who had taken to investment loans for two separate purposes, the two loans shall be counted as two distinct loans and the Scheme will apply to the two loans separately.

5.Debt Relief

5.1. In the case of a small or marginal farmer, the entire 'eligible amount' shall be waived.

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 percent of the 'eligible amount' subject to the condition that the farmer pays the balance of 75 percent 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 percent 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'.*

*8.*As per clause 3.3 (A), deepening of Wells fall under direct agricultural activities. Other farmers are farmers owning more than 5 acres of lands. As per explanation 3 to clause 3.7, a farmer, who had obtained investment credit for allied activities where the principal does not exceeds Rs.50,000/-, then he can be classified as small and marginal farmer. Where the principal amount exceeded to Rs.50,000/-, he would be classified as other farmer, irrespective of the size of the land held, if any.

9.In the present case, the petitioner claims to have obtained loan for deepening the bore Well. This fact has not been seriously disputed by the respondent. The claim of the respondent that the loan is for other allied activities has also not been substantiated by the respondent. Hence, in my view, the claim of the respondent that the petitioner will have to be classified as other farmer is not correct. The judgments relied upon by the respondent cannot be applied to the facts of the case, since the loans that had been obtained in both cases were for allied activities, for which, only Clause 6 would be applicable, whereas, in this case, Clause 5 would be applicable.

10.As I have already come to the conclusion that the petitioner has only borrowed loan for deepening of bore Well, which falls under direct agricultural activities and that the petitioner only owns an extent of 1 acre 71 cents would fall under category of a small farmer. When he falls under the category of small farmer, as per the clause 5 of the said scheme, he would be entitled for a waiver of the entire eligible amount.

11.In view of the aforesaid findings, I hold that the petitioner is eligible for the entire waiver of his loan outstanding and hence, the impugned demand notice is liable to be set aside.

12.Accordingly, the writ petition is allowed and the impugned demand notice is set aside. The respondent is directed to release the jewel of the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

03.03.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No

sbn

To

The bank Manager,
Union Bank of India,
Vilacheri Branch,
6/186, Main Road,
Vilacheri, Madurai 625006.

K.KUMARESH BABU, J.

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