BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.02.2024

PRONOUNCED ON : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.1174 of 2023
and CMP(MD).No.8985 of 2023

Dr.P.Hema ....Appellant/Petitioner

Vs

1.Union of India
Rep.by its Secretary to Government
Ministry of Finance and Building
North Block, New Delhi 110 001

2.The General Manager
UCO Bank -Head Office
No.10, B.T.M.Sarani
Kolkatta

3.The Zonal Manager
UCO Bank
Vijaya Tower 1st Floor
No.22, Father Randy Street
R.S.Puram, Coimbatore
Coimbatore District 641 002

4.The Manager
UCO Bank
Karaikudi Branch
T.S.No.112/39, Kalluatti North
Karaikudi
Sivagangai District 630 001 ...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P(MD).No.2618 of 2020 dated 13.06.2023 passed by this Court and to allow this writ appeal.

For Appellant : Mr.P.V.Ramachandran

For R1 : Mr.K.Govindarajan
Deputy Solicitor General of India

For R2 to R4 : Mr.P.T.S.Narendravasan

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The petitioner in the writ petition is the appellant. The writ petition has been filed seeking a mandamus as against the Bank officials to waive the interest on the educational loan as per Central Scheme for interest subsidy and regularize the education loan account.

2.Facts leading to the filing of these writ appeal are as follows:

(i)The petitioner had availed education loan from UCO Bank, Karaikudi Branch for undertaking MBBS course in the academic year 2004-2005 for a sum of Rs.7,50,000/-. The said loan was disbursed to the writ petitioner on various dates between March 2005 to June 2008. The petitioner had completed the course in the year 2011.

(ii)The petitioner received a legal notice from the Bank on 10.03.2016 calling upon her to pay a sum of Rs.16,37,815.37 along with interest to repay the education loan. The father of the writ petitioner had given his house property as collateral security for the above said education loan as per Bank norms.

(iii)According to the writ petitioner, as per CSIS scheme (New Central Scheme for Interest Subsidy), the Central Government has taken over the liability for outstanding interest as on 31.12.2013. However, the Bank has not adhered to the said scheme.

(iv)The petitioner belonging to the economically weaker section, she is entitled to the said relief. According to the petitioner, she had repaid a sum of Rs.9,13,800/- and the said amount has not been properly credited to her account. Without subsidising the interest as per CSIS Scheme, the Bank officials are continuously insisting her to repay the loan amount. Hence, she had filed the writ petition.

3.The respondents had filed a counter before the writ Court contending that the subsidy granted by the Government under CSIS scheme has been credited to the account of the writ petitioner, totalling a sum of Rs.4,24,443/-. Whatever concession that the writ petitioner is entitled to, the entire concession has been conferred and therefore, the allegations are not true. The Bank had further contended that the petitioner had repaid only a sum of Rs.8,96,800/- and not Rs.9,13,800/-. The Bank had further contended that they are entitled to levy interest from 31.01.2005. Hence, they prayed for dismissal of the writ petition.

4.While the writ petition was pending, based upon the collateral security created by the father of the writ petitioner for the said education loan, the Bank had initiated proceedings under Section 14 of the SARFAESI Act. The petitioner had approached this Court by filing W.P(MD).No.13386 of 2023 seeking to quash the order of Chief Judicial Magistrate, Sivagangai. In the said writ petition, the Standing Counsel appearing for the Bank had contended that the amount due to the Bank as on that date was Rs.23,80,797/-. Accepting the said contention, the Division Bench was pleased to pass the following order on 07.06.2023 which is extracted as follows:

> "(i) The petitioner shall pay a sum of Rs.11,80,797/- (Rupees Eleven Lakhs Eighty Thousand Seven Hundred and Ninety Seven only) on or before 10th of July 2023.
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> (ii) The Bank is restrained from taking possession of the property, if the petitioner pays the said amount.
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> (iii) The remaining amount of Rs.12,00,000/- (Rupees Twelve Lakhs only) shall be paid in three equated monthly instalments commencing from 10th of August 2023.
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> (iv) The interest that accrues during the interregnum and other expenses, if any, shall be paid along with the last of the instalment.
>
> (v) If there is any default in payment of the monies as aforesaid, the Bank will be at liberty to proceed with further action."

5.When the writ petition came up for final hearing, the writ Court relying upon the order of the Division Bench dated 07.06.2023, closed the writ petition on the ground that nothing survives for consideration. Challenging the said order, the present writ appeal has been filed.

6.Contentions of the parties are as follows:

(i)The prayer in W.P(MD).No.2618 of 2020 was for a mandamus to apply CSIS Scheme in its entirety and to regularize the loan account. But the prayer in W.P(MD).No.13386 of 2023 was to quash the order of the learned Chief Judicial Magistrate passed under Section 14 of the SARFAESI Act. Therefore, any order passed in W.P(MD).No.13386 of 2023 would not result in complete adjudication of the dispute raised by the writ petitioner in W.P(MD).No.2618 of 2020.

(ii)The Division Bench in W.P(MD).No.13386 of 2023 has not gone into the quantum of the claim made by UCO Bank and only a direction was issued restraining the Bank from taking possession. Therefore, the order of the Division Bench would not in any way affect the rights and contention of the petitioner in W.P(MD).No.2618 of 2020.

(iii)The pendency of W.P(MD).No.2618 of 2020 was not brought to the notice of the Division Bench. That apart, the appellant herein has not instructed her previous counsel to undertake to pay the entire liability in installments. The undertaking is contrary to the pleadings in W.P(MD).No.13386 of 2023 and also W.P(MD).No.2618 of 2020.

7.In view of the above said facts, he contended that the writ petition ought to have been decided independently on merits and in accordance with law without being closed.

8.Per contra, the learned counsel appearing for the respondent Bank had contended that as per CSIS Scheme of Central Government, whatever amount the petitioner is entitled to, has been credited to her account, totalling a sum of Rs.4,24,443/-. The petitioner is not entitled to any further interest subsidy as per the said scheme. The petitioner having completed her course in the year 2011 is liable to repay the education loan along with interest as agreed by her. The petitioner having given an undertaking before the Division Bench to repay the entire dues as claimed by the Bank, cannot now turn around and contended that she had not authorised her counsel to give such undertaking or the said undertaking is contrary to her pleadings. Hence, he prayed for dismissal of the writ petition.

9.We have considered the submissions made on either side and perused the material records.

Discussion:

10.The petitioner had availed educational loan from UCO Bank for a sum of Rs.7,50,000/- for undergoing MBBS Course. She had completed the said course in the year 2011. As per the loan agreement, the petitioner has to commence the repayment of the said loan one year after completion of studies. Therefore, it is clear that the petitioner has to repay her loan from the year 2012 onwards. Having failed to make her repayment, the legal proceedings have been initiated by the Bank in the year 2016. The collateral security offered by the father of the writ petitioner has been subjected to the SARFAESI proceedings.

11.A perusal of the certificate of External Auditor of the Reserve Bank of India clearly reveals that the interest subsidy for the education loan of the writ petitioner has been credited to her account. On 29.08.2014, a sum of Rs.3,33,096/- has been credited. Another sum of Rs.91,347/- has been credited on 30.09.2014. Totalling a sum of Rs.4,24,443/- has been credited to the educational loan account of the writ petitioner towards interest subsidy under CSIS Scheme. The petitioner is not able to establish that she is entitled to more amount towards interest subsidy. Therefore, it is clear that the entire interest subsidy as per the scheme has been credited to the account of the writ petitioner which has been audited by the External Auditor of the Reserve Bank of India.

12.When the proceedings were initiated under Section 14 of SARFAESI Act, the petitioner has given an undertaking that she would repay the entire amount of Rs.23,80,797/- as installments as observed by the Division Bench in paragraph No.4 of the order dated 07.06.2023 in W.P(MD).No.13386 of 2023. Now the learned counsel for the petitioner had contended that the counsel who had appeared before the Division Bench was not instructed to give such undertaking and therefore, such an undertaking is not binding upon him. We are not inclined to accept the said contention. In case, if any such undertaking has been given, without any instruction, it is for the petitioner to approach the same Bench and she cannot take a contrary view before the other Bench.

13.The petitioner's father is a retired Chief Civil Surgeon/ Medical Officer from a Government Hospital. The petitioner's mother is a Headmistress. Therefore, the contention of the petitioner that she belongs to the economically weaker section and entitled to further interest subsidy is not legally sustainable. Since the petitioner had agreed to repay the entire amount due to the Bank before the Division Bench in W.P(MD).No.13386 of 2023, the issue raised in W.P(MD).No.2618 of 2020 relating to interest subsidy does not require any further consideration. Therefore, the writ Court was right in closing W.P(MD).No.2618 of 2020, relying upon the order of the Division Bench.

14.In view of the above said deliberations, we do not find any merit in the writ appeal. The writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,) **(R.V.J.,)**

14.02.2024

Index :yes
Internet :yes
NCC :Yes/No
msa

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgment made in

W.A(MD).No.1174 of 2023
and CMP(MD).No.8985 of 2023

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