**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 22.03.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**
**and**
**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A.(MD)No.983 of 2017**
**and**
**C.M.P.(MD)No.6702 of 2017**

1.M.Kalaivani
2.M.Umadevi
3.M.Nithiya : Appellants

Vs.

1.The Registrar of Co-operative Societies,
Kilpauk Garden,
Chennai.

2.The Joint Registrar / President of the Committee,
Office of the Joint Registrar of Co-operative Societies,
Kumarasamy Raja Nagar,
Collectorate Buildings,
Virudhunagar.

3.The Joint Registrar / Special Officer,
Virudhunagar District Central Co-operative Bank,
Madurai Road,
Virudhunagar.

4.The Branch Manager,
Chatrapatti Branch of Virudhunagar,
District Central Co-operative Bank,
Virudhunagar. : Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the judgment dated 19.10.2011 in W.P.(MD) No.2619 of 2011.

For Appellant : Mr.Mohamed Imran
for M/s.Ajmal Associates
For Respondents 1, 2 & 4 : Mr.M.Prakash
Additional Government Pleader
For Respondent No.3 : Mr.D.Shanmugaraja Sethupathi

**JUDGMENT**
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[Judgment of the Court was delivered by
**V.BHAVANI SUBBAROYAN, J.]**

This Writ Appeal has been filed challenging the order passed by this Court dated 19.10.2011 in W.P.(MD)No.2619 of 2011.

**2.**The appellants are the legal heirs of one Muthumadasamy, who filed W.P.(MD)No.2619 of 2011, seeking to quash the proceedings of the second respondent dated 01.02.2011 and the consequential order of the third respondent dated 03.02.2011.

**3.**The writ petitioner has borrowed a loan from the cooperative Society ie., District Central Cooperative Bank, Virudhunagar and it is a commercial loan not an agricultural loan. Several notices have been issued to the writ petitioner. The writ petitioner had sent a representation dated 30.03.2001, to the Cooperative Society stating that his mill is running in a loss and half of the looms are not operated and he is unable to pay the interest amount. He agreed that for developing his industry, he borrowed a sum of Rs.46,00,000/- and Rs.2,00,000/- towards term loan and he had also taken money from outsiders and he has to sell his property to pay those debts, only then he will be in a position to pay the principal as well as interest. Since the said property was tagged as a security for obtaining the loan, the petitioner sought for release of the property to enable him to sell those properties and pay the amount to the Bank. Thereafter, the petitioner came to know that there was a special loan waiver scheme introduced by the State Government in the year 2009, vide G.O.(2D)No.77, Co-operation, Food and Consumer Protection Department dated 22.07.2009 and the petitioner filed a writ petition in W.P.(MD)

No.11185 of 2009, wherein this Court vide order dated 24.01.2011 directed the District Level Committee to consider the case of the petitioner. Since the scheme will close on 28.02.2011, the District Level Committee was directed to examine the eligibility of the petitioner in availing the scheme.

**4.**Pursuant to the said order of this Court, the District Committee considered the case of the petitioner and found that the scheme is for waiver of the interest but the petitioner being a non-bonafide borrower is not eligible for the benefit of the scheme. Further, enquiry was conducted under Section 81 of the Tamil Nadu Cooperative Societies Act and action was initiated against the then Chairman cum Managing Director and the General Manager and surcharge proceedings were also initiated under Section 87 of the Act. Since the petitioner has not paid back the loan, arbitration proceedings were initiated against him under Section 90 of the Act and an arbitral award came to be decreed against the petitioner. The petitioner had also preferred an appeal under Section 152 of the Act in C.M.A.(CS)No.1/2002 before the Cooperative Tribunal. The said appeal came to be dismissed by the Tribunal. The petitioner's earlier writ petition in W.P.(MD)No.46555 of 2002 was also dismissed, confirming the decree passed by the Tribunal and a direction was issued to the Society to continue with the executive proceedings. Accordingly, executive proceedings were initiated under E.P.No.109/2001-02 and the petitioner's properties were proposed to be auctioned. Pursuant to the auction notice dated 25.02.2007, out of 11 properties, 6 properties were sold for a sum of Rs.10,00,000/- and the said amount was brought under the loan account of the petitioner. Since for the rest of the properties there were no bidding, the District Central Cooperative Bank themselves took over the properties for a sum of Rs.90,00,000/- and the same was also brought under the credit of the petitioner's loan account.

**5.**In the meanwhile, the Registrar issued a circular dated 18.09.2011, wherein it has been stated that waiver scheme will not be applicable to those persons who are involved in surcharge proceedings or facing criminal action or subjected to inquiry under Sections 81 and 82 of the Act. By the said circular, all the cooperative societies were directed to implement the same, while considering the cases of such loan waiver requests. Only based on the said circular, the petitioner's case was denied as the petitioner's loan account was treated as NPA. Challenging the same, the petitioner once again filed W.P.(MD)No.2619 of 2011. The learned Single Judge vide impugned order dated 19.10.2011, observed that the writ petition itself is not maintainable, since the loan transaction between the petitioner and the Cooperative Bank is purely contractual and the petitioner has suffered a decree which the appellate Tribunal has confirmed. The learned Single Judge further observed that a careful perusal of the circular dated 26.09.2010 shows that the petitioner is not eligible for such waiver scheme as the petitioner having availed the loan, has not even paid a penny to the Bank and the Bank has also taken necessary steps to recover the amount and since the petitioner is not a bonafide borrower, the writ petition was dismissed. Challenging the same, the writ petitioner's legal heirs are before this Court.

**6.**The learned Counsel for the appellants would state that the second respondent by an order of this Court was directed to consider the loan waiver scheme in the light of G.O.(Ms)No.77, dated 22.07.2009 but they have decided the case of the appellant without even referring to the said Government Order and hence, the impugned order has been passed contrary to the same. Hence, the said order has to be set aside.

**7.**He further submitted that the learned Single Judge has gone beyond the scope of the writ petition and has come to the erroneous conclusion that the writ petition is not maintainable, since it is a contractual one, whereas the case of the appellants is not extending the benefit given by the Government in G.O.(Ms).No.

77. The petitioner is eligible for the said loan waiver scheme and that they have no means to pay the said loan and also prayed for allowing the Writ Appeal.

**8.**On going through the averments, it is seen that the petitioner has been approaching this Court for very long years and the petitioner’s loan amount sanctioned was all for commercial transaction. The petitioner was running a textile mill and has availed the loan for the same and not for agricultural purposes and he has also given his properties as a security. The same was taken on account and proper proceedings were initiated and some of the properties were also sold and the remaining properties were taken by the Bank. Further, surcharge proceedings have also been initiated against the persons who are all involved in disbursing the loan. Now, the petitioner cannot come and plead that they are eligible for loan waiver. It is to be seen that only persons who are genuine borrowers are entitled for waiver under the said G.O. But here is a case where the appellant's father has obtained the loan and kept on filing writ petitions and one such writ petition in W.P.(MD)No.11185 of 2009, seeking for a direction to the third respondent to permit the petitioner to avail G.O.(Ms).No.77 dated 22.07.2009, which was also allowed and the District Committee was directed to evaluate whether the case of the petitioner therein can be considered or not. Further, since the scheme itself expires on 28.02.2011, the District Committee was directed to dispose of the matter on or before 15.02.2011. The District committee found that the petitioner therein was not eligible for the scheme as he is not a bonafide borrower. Hence, at this juncture, in the year 2024, the scheme cannot be availed by the appellants. The learned Single Judge has also reiterated that the petitioner therein is not entitled for the scheme, as it is a commercial transaction and he is not entitled for waiver. Therefore, this Writ Appeal is liable to be dismissed.

**9.**Accordingly, this Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**[V.B.S.,J.] & [K.K.R.K.,J.]**
**22.03.2024**

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

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**V.BHAVANI SUBBAROYAN, J.**

**and**

**K.K.RAMAKRISHNAN, J.**

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**JUDGMENT MADE IN**

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