(2014) 07 RAJ CK 0146

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7872 of 2009

Baldeo Singh APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2014) 4 RLW 3629

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Trilok Joshi, Advocate for the Appellant; Ashwani Swami, Advocate for the Respondent

Judgement

Pratap Krishna Lohra, J.—In these petitions, the father and son duo have prayed for quashing order dated 8.7.2009 demanding due loan amount as well as notice dated 23.4.2009 issued in relation to auction proceedings with the further prayer to issue No Objection Certificate in their favour. Brief facts giving rise to the present petitions are that the petitioners Baldeo Singh and Boota Singh applied for loan to the respondent Hanumangarh Kendraiya Sahakari Bank Limited and were sanctioned loan for fertilizer and seeds amounting to Rs. 28,800 and 32,500 respectively on 27.6.2007 and 30.6.2007. As the loan amount could not be repaid timely, the respondent No. 3 Bank filed applications before respondent No. 2, the Prescribed Authority cum Executive Officer for recovery of due amount under Section 88 of the Rajasthan Cooperative Society Act 2001 showing amount due against petition Baldeo Singh Rs. 35,750 and against petitioner Boota Singh Rs. 39,600 as on 31.3.2009. The respondent Bank alongwith the applications also submitted statements of loan accounts. The Prescribed Authority, in its turn, issued notice to the petitioners calling them to deposit due amount within 30 days else to initiate recovery proceedings against them. On receipt of the notice, petitioners appeared before the Prescribed Authority on the dates fixed and claimed benefit under the Agriculture Debt Waiver and Debt Relief Scheme, 2008 in respect of which the respondent Bank itself had issued notification in local newspaper informing that as per the Scheme of the Central Government on one time deposit of 75% of the loan amount upto 30.6.2009, the eligible members of the Scheme shall be entitled to get relief of 25% in the loan amount. Relying on the said notification published in daily newspaper "Rajasthan Patrika" on 16.6.2009, the petitioners made applications showing their willingness to deposit 75% of the due amount and eventually deposited Rs. 56,000 on 25.6.2009 before the last date notified for getting benefit of the Scheme. As per the petitioners after receiving desired amount instead of issuing No dues certificates the respondent by order dated 8.7.2009 demanded the outstanding loan amount with interest from the petitioner as aforesaid. The said order was passed under Section 99 of the Act of 2001.

2. The writ petitions came up on 7th of August 2009 and while admitting the same, this Court issued interim protection in favour of petitioners directing that in the meanwhile and until further orders coercive proceedings against the petitioners shall remain stayed.

3. Reply to the writ petitions have been filed on behalf of respondents inter-alia stating that the petitioners are not entitled for benefit under the Agriculture Debt Waiver and Debt Relief Scheme, 2008 because as per said scheme they are not satisfying under-mentioned three conditions in respect of loans:

1. Disbursed upto 31.3.2007 and overdue as on 31.12.2007 and remaining unpaid until 29.2.2008.

2. Restricted and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government, whether overdue or not; and

3. Restructured and rescheduled in the normal course upto 31.12.2007 as per applicable RBI guidelines on account of natural calamities whether overdue or not.

4. Laying emphasis on the conditions for applying the Scheme of 2008, the respondent Bank has pleaded that the loan amount was sanctioned and disbursed to the petitioners after March 2007, therefore, they are not eligible for claiming benefits of the Scheme. Pointing out that the petitioners were obliged to deposit entire outstanding amount, the proceeding initiated for recovery of the amount are in accordance with law and are not liable to be dropped.

5. Learned counsel for the petitioners Mr. Trilok Joshi has argued that as per the Scheme of 2008 and Notice (Annex. 3) published by the respondent Bank, the petitioners have deposited the requisite 75% outstanding amount and therefore recovery proceedings are not tenable. Learned counsel has contended that petitioners are the poor agriculturists for whom Central Government has floated loan waiver scheme and once the Bank has accepted the 75% amount, proceedings for recovery is unjust and improper and cannot be sustained. Mr. Trilok Joshi, learned counsel for the petitioners would contend that the petitioners have availed the benefit of loan waiver scheme on the assurance

given by the Bank by publishing notification in newspaper and in want of specific denial about the notification published in the newspaper, the respondent Bank cannot be permitted to eschew its own commitment by urging that the petitioners are not covered under the Scheme of 2008. Learned counsel has submitted that the Central Government has floated the Scheme for the benefit of marginal, small and other farmers and while relying on the same the Secretary of the Bank has issued notification in the newspaper, as such, the Bank cannot be allowed to disown the notification to deprive the petitioners from benefit of the Scheme. Learned counsel has further submitted that the matter is pending before this Court since 2009 and interim protection has been granted to the petitioner, now after a lapse of almost five years, on equitable considerations impugned recovery proceedings initiated by the respondent Bank are not sustainable.

6. Per contra, learned counsel for the respondent, Mr. Ashwani Swami, has submitted that the respondent Bank has rightly resorted to recovery proceedings under Section 99 of the Act of 2001 and being a cooperative society, it is well within its right to recover dues from members/borrowers of the Society under Section 99 of the Act of 2001. Mr. Swami has submitted that the notification published by the respondent Bank in the newspaper was pertaining to eligible agriculturists and as both the petitioners are not eligible for loan waiver under the Scheme of 2008, impugned recovery proceedings are just and proper and calls for no interference.

7. I have heard learned counsel for the parties and perused the materials available on record.

8. Upon perusal of the materials available on record, it is amply clear that both the petitioners were granted loan by respondent Bank for fertilizer and seeds in the month of June 2007. The loan sanctioned and disbursed to both the petitioners was for a very meager sum. Sanctioning and disbursement of such a meager loan amount makes it crystal clear that the petitioners are small and marginal farmers.

9. Explanation 3 to Clause 3 of the Scheme of 2008, which defines "small and marginal farmer," reads as under:

3. In the case of a farmer who has obtained investment credit for allied activities where the principal loan amount dues 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.

10. After floating of the Scheme of 2008, examining it threadbare, the respondent Bank has published notification in the newspaper dated 16th of June 2009 alluring agriculturists, who were granted loan by the Bank, to avail benefit of the Scheme of 2008 by depositing 75% amount. The complete text of the Notification reads as under:

11. Pursuant to the notification, both the petitioners approached respondent Bank and submitted applications approached respondent Bank and submitted application for availing benefit under the Scheme of 2008, and the Bank while acceding to their request has accepted 75% of the amount. There is a positive assertion by both the petitioners in Para 6 of the writ petition that pursuant to the notification published in the newspaper both of them submitted application for availing benefit of the loan waiver scheme of 2008. The aforesaid assertion of the petitioners has not been denied by the respondents in reply, which makes it clear that by treating both the petitioners eligible for availing benefit under the Scheme, requisite amount tendered by them was accepted. The objection of the respondents in the reply is that petitioners were not eligible to avail benefit of the Scheme of 2008.

12. Well, it is true that Clause 4.1(a)(i) of the Scheme under the caption "Eligible Amount", envisage that in case of short term production loan, loan amount is required to be disbursed upto 31st of March 2007, and to be overdue as on 31st of December 2007 and remaining unpaid till February 29, 2008, whereby the case of both the petitioners are not covered. Besides that, eligibility condition under Clause 5.1 under the "Debt Waiver" it is also envisaged that in case of small and marginal farmer, the entire eligible amount shall be waived.

13. While publishing notification the Bank examined the entire Scheme of 2008, and when both the petitioners volunteered to deposit requisite 75% amount to avail benefit under the Scheme of 2008, it has accepted the amount, has made this Court to believe that the notification was intended to extend benefit to the small and marginal farmers like petitioners. The act of the petitioners in submitting application for availing benefit under the Scheme of 2008 was bona fide and the same was considered by the Bank in terms of the notification published in the newspaper is yet another mitigating factor tilting equity in favour of the petitioners, who are small farmers. The Government of India has offered succor to small and marginal farmers from time to time in the form of floating schemes for loan waiver and it appears that the respondent Bank has also decided to extend the said benefits to the small and marginal farmers like petitioners. Looking to the status of the petitioners, who are small farmers, it is rather impossible to believe that the petitioners were aware about the terms and conditions of the Scheme of 2008. As a matter of fact, the petitioners have acted as per the notification issued by the Bank and deposited the requisite amount for availing the benefit of the loan waiver scheme.

14. In my considered opinion, on equitable considerations now it is not desirable to deprive them from the benefits flowing from the Scheme of 2008 which was extended to them by the respondent Bank consciously. Moreover, both these petitions are pending since 2009 and interim protections have been granted to the petitioners. On the principles of equity, justice and good conscience also, and looking to the status of the petitioners, who are small farmers, it is not desirable to permit the respondent Bank to continue with the impugned recovery

proceedings. Accordingly, these petitions are allowed, the impugned recovery proceedings initiated by the Bank against petitioners are annulled and the respondent Bank is directed to issue No Due Certificate to the petitioners.