(2016) 06 KL CK 0022

In the High Court Of Kerala

Case No : W.P.(C). No. 14691 of 2016 (J)

Binimol Suresh APPELLANT

Vs

District Industries Centre RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 3 ILRKerala 426

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Sri. Mathew Kuriakose, Advocate, for the Appellant; Sri. Sojan James, Government Pleader, Sri. P. Gopinath Menon, SC, Sri. M. Gopikrishnan Nambiar, Sri. P. Gopinath, Sri. P. Benny Thomas, Sri. K. John Mathai, Sri. Joson Manavalan and Sri. Kuryan Thomas, A

Final Decision : Disposed Off

Judgement

P.B. Suresh Kumar, J.—The petitioner has established a small scale industrial unit using the financial assistance extended to her by way of a term loan by the second respondent bank. On 17.2.2016, the Government had extended to the petitioner an investment support in the form of subsidy under an Entrepreneurs Support Scheme. As per the said scheme, such subsidies are disbursed through the financing bank of the unit. A sum of Rs. 17,08,774/- was the investment support received by the second respondent bank on behalf of the petitioner. The proceeds of the investment support received by the second respondent bank was credited in the current account of the petitioner. At the relevant time, approximately Rs. 3.5 lakhs was overdue in the term loan account of the petitioner. Consequently, the said amount was transferred by the second respondent bank from the current account of the petitioner on two dates to the term loan account. The grievance of the petitioner is that though there is no over dues in the term loan account, the second respondent bank is not permitting her to withdraw the balance investment support lying in her current account.

2. A statement has been filed by the second respondent bank. The stand taken by the bank in the statement is that the bank is entitled to retain the balance investment support received by them on behalf of the petitioner in the current account of the petitioner for adjustment towards her liability in the term loan account.

3. Heard the learned counsel for the petitioner as also the learned counsel for the second respondent bank.

4. Clause 58 of the Entrepreneurs Support scheme relied on by the learned counsel for the bank in support of their stand reads thus:

"58. Investment support shall be disbursed by the recommending authority through the financing institution which has financed the unit on their executing an agreement with the recommending authority in the prescribed format. If there are more than one such financing institution the amount shall be credited to the term loan lending institution."

5. Clause 58 of the Entrepreneurs Support Scheme relied on by the bank does not indicate that they can retain the investment support extended to the entrepreneur until the liability of the entrepreneur is over. It only says that the investment support shall be disbursed by the recommending authority through the financing bank. True, if the entrepreneur is in default, when the amounts due to the entrepreneur are received by the bank, certainly the bank can appropriate the same. In the absence of an agreement between the bank and the entrepreneur that the investment support will be adjusted towards the loan liability, I do not think that the bank is entitled to adjust any amount over and above the over dues in the loan account. In the said view of the matter, the petitioner has to succeed.

6. In the result, the writ petition is allowed and the second respondent is directed to disburse to the petitioner the investment support received from the Government less the over dues in the term loan account. This shall be done within two weeks from the date of receipt of a copy of this judgment.