(2023) 06 GAU CK 0094

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5930 Of 2021

Dilip Borah APPELLANT

Vs

Housing And Urban Development Corporation Ltd And Anr RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 06 GAU CK 0094

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : M Borah, K Bhattacharjee

Final Decision : Dismissed

Judgement

1. Heard Ms. M. Borah, learned counsel for the petitioner and Mr. K. Bhattacharjee, learned Standing Counsel, HUDCO for the respondent nos. 1 & 2.

2. From the case projected in the writ petition, it is found that the petitioner applied for a loan before the respondent no. 2 in the year 2002 for the purpose of renovating his residential house. After all formalities, the petitioner was sanctioned and provided a sum of Rs. 1,50,000/- as loan on 27.06.2002. As per the sanction letter dated 27.06.2002, the loan was repayable in 120 nos. of Equated Monthly Installments [EMIs] for a period of 10 years @ Rs. 2109/- and the loan was disbursed at a rate of interest @ 11.50% per month. The petitioner was sanctioned and granted another loan of Rs. 1,00,000/- by the respondent no. 2 on 22.03.2005. The loan was repayable at an EMI @ Rs. 1006/- for a period of 10 years from April 2001 to March 2019. According to the petitioner, he paid an amount of Rs. 53,981/- towards installment payments to the respondent no. 2 during the period from 2002 to 2005. He had paid a total amount of Rs. 48,410/- during the period from 2008 to 2015. The petitioner paid another amount of Rs. 40,000/- in favour of the respondent no. 2 on 27.06.2017.

3. When the petitioner approached the respondent no. 2 in order to liquidate the

entire loan amount as a one time settlement in the year 2019, the petitioner was advised to deposit a sum of Rs. 1,00,000/- which, according to him, was duly deposited. According to the petitioner, the cause of action for instituting the writ petition arose on 27.01.2020 when the respondent no. 2 issued a letter to the employer of the petitioner demanding clearance of an amount of Rs. 7,61,373/-. It was cited therein that the petitioner had defaulted in the repayment of the loans he had taken from the respondent no. 2 and the amount of Rs. 7,61,373/- was payable to the respondent no. 2 against the loans. It was further requested to the employer of the petitioner by the respondent no. 2 not to disburse the pensionary benefits of the petitioner without clearance of the defaulted amount. The petitioner had thereafter, submitted a proposal for settlement of the loan on 04.03.2020 by offering an amount of Rs. 3,50,000/-towards total liquidation of the loans he had taken from the respondent no. 2. Contending that he had already paid an amount of Rs. 4,52,395/- and he was ready to pay another amount of Rs. 3,50,000/- towards closure of the loans, the petitioner had instituted the instant writ petition under Article 226 of the Constitution of India seeking a writ in the nature of mandamus for a direction to the respondent authorities to accept the petitioner’s offer letter dated 04.03.2020 for closure of his loans under the One Time Settlement Scheme of the respondent HUDCO.

4. Mr. Bhattacharjee, learned counsel appearing for the respondent HUDCO authorities has submitted, by placing a letter bearing no. HUDCO/GRO/RF-1045 & 2018/2020 dated 23.03.2020, that the petitioner’s proposal for One Time Settlement of his loan account was reviewed at the end of the respondent no. 2. During the process of review, it was found that the total loan amount outstanding, as on 31.03.2020, was Rs. 7,84,084/-. By the letter dated 23.03.2020, it was proposed to the petitioner that in the event of deposit of an amount of Rs. 6,80,075/- within March, 2020 under the One Time Settlement Scheme, the penal interests amounting to Rs. 1,04,009/- could be considered for exemption as per the applicable guidelines. The petitioner was requested by the letter dated 23.03.2020 to remit an amount of Rs. 6,80,075/- within a period of one month therefrom to avoid further accrual of interest and penal interest.

5. Mr. Bhattacharjee, learned Standing Counsel, HUDCO has submitted that the petitioner did not deposit the said amount of Rs. 6,80,075/- within the stipulated period of time as offered to him for One Time Settlement by the letter dated 23.03.2020. Mr. Bhattacharjee has further submitted that the respondent HUDCO had already instituted a title suit being Title Suit no. 39/2020 against the petitioner seeking recovery of the defaulted amount.

6. I have considered the submissions of the learned counsel for the parties and have also considered the relief sought for by the petitioner in the instant writ petition.

7. It need iteration that the relief sought for by the petitioner in the present writ petition is a writ in the nature of mandamus to the respondent authorities to accept the petitioner’s offer made vide his letter dated 04.03.2020, for closure of

his loan accounts under the One Time Settlement Scheme of the respondent HUDCO.

8. It is noticed that the Hon'ble Supreme Court of India by its decisions in State Bank of India vs. Arvindra Electronics Private Limited., decided on 4.11.2020, and reported in [2023] 1 SCC 540; and Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others, decided on 15.12.2021, and reported in [2023] 2 SCC 805; has considered the matters of One Time Settlement Scheme and maintainability of a writ petition under Article 226 of the Constitution of India seeking a direction for consideration of case under One Time Settlement of a financial institution/bank.

9. It is observed in Bijnor Urban Cooperative Bank Limited [supra] that if a prayer is entertained on the part of a defaulting person to compel or direct the financial institution/bank to enter into a one-time settlement on the terms proposed by him, then every defaulting person who is capable of paying his dues as per the terms of the agreement entered into by him would like to get one-time settlement in his favour. It has observed that no writ of mandamus can be issued by the High Court in the exercise of powers under Article 226 of the Constitution of India, directing financial institution/bank to positively grant the benefit under the One Time Settlement to a defaulting borrower. A grant of benefit under the One Time Settlement Scheme is always subject to eligibility criteria mentioned under the One Time Settlement Scheme and the guidelines issued from time to time. Such a decision to be commercial widsom of the financial institution/bank whose amount is involved.

10. In State Bank of India [supra], it is held that the borrower, as a matter of right cannot claim for the benefit of One Time Settlement Scheme of a financial institution/bank. A borrower who has not made the payment as per the sanctioned One Time Settlement Scheme to grant further extension as a matter of right and a borrower is bound to make the payment as per the sanctioned One Time Settlement Scheme and a High Court should refrain itself from granting any extension/benefit under the One Time Settlement Scheme while exercising the power under Article 226 of the Constitution of India.

11. In view of such settled position of law qua the reliefs sought in the present writ petition, I find that the writ petition is not maintainable and is liable to be dismissed. It is accordingly dismissed. No cost.

