(2010) 01 KL CK 0063

In the High Court Of Kerala

Case No : W.A. No. 2886 of 2009

Hamsa Haji K. — APPELLANT

Vs

The Malappuram District Co-op. Bank Ltd. and The Authorised Officer (General Manager) — RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Citation : (2010) 01 KL CK 0063

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K. Muhammed Salahudheen, for the Appellant; No Appearance, for the Respondent

Judgement

Ramachandran Nair, J.—Appeal is filed against judgment of the learned Single Judge granting ten equal monthly instalments to the appellant to clear the arrears of loan taken from the first respondent-Bank which was Rs. 2,84,106/- as on 7.11.2009. We have heard counsel appearing for the appellant and Standing Counsel appearing for the first respondent. The loan of Rs. 2 lakhs was taken by the appellant on 22.10.2005. However, appellant did not make any payment and consequently recovery was initiated. Under interim orders of this Court, appellant paid Rs. 50,000/- and the liability shown above is after reckoning the payment of the said amount. Counsel for the appellant submitted that the first respondent is charging fleecing rate of interest at 18% and on account of default, additional penal charges are levied, that too at compounded rate. We feel interest charged at 18% itself is a fairly high rate and therefore, appellant can be exempted from payment of penal rates, if appellant makes payment within a reasonable time which we fix at 30th March, 2010. It is stated that petitioner has already paid one instalment pursuant to judgment of the learned Single Judge. The average monthly instalment under the impugned judgment is around Rs. 30,000/- which a defaulter can pay only if he has substantial regular income. Appellant admittedly is not a regular income earner and therefore, he has to necessarily make some sacrifice by way of liquidation of some asset to clear the arrears is his case. Counsel submitted that if reasonable time is granted, appellant will clear the entire arrears. Standing Counsel appearing for the first respondent submitted that any relief granted by this Court should be on strict conditions. Considering the contention of both sides, we dispose of the Writ Appeal by modifying the judgment as follows:

(i) Recovery proceedings initiated against the appellant will be withheld till 30.3.2010. The first respondent-Bank will prepare a statement of accounts charging simple interest at 18% p.a. without charging penal rate or compounding rate, give credit for the payments already made with reference to date of payment and rework balance liability due as on 30.3.2010 well in advance and give a statement to the appellant within a month from production of copy of this judgment. If appellant makes payment of the amount determined by the Bank as above on or before 30.3.2010, then the security document should be released to him treating the debt as fully discharged.

(ii) If appellant commits default, the waiver of interest granted in excess of 18% and exemption from penal rate and compounding rate granted by this Court will stand automatically vacated and the Bank will be entitled to recover the entire arrears in terms of the loan agreement which will be recovered from the appellant after 30.3.2010.

(iii) If default is committed, there will be further direction to the appellant to surrender free of possession the mortgaged property to the Secretary of the Bank immediately after default for him to sell the property for recovery of arrears. There will be an order of prohibition against the appellant from parting with possession or encumbering or doing anything to reduce the value of the mortgaged property until arrears are cleared. If there is default by the appellant in regard to surrender of property after default, the Bank will bring it to the notice of this Court for initiating contempt against the appellant besides taking steps for recovery.

2. Since the learned Single Judge has directed the Bank to consider reduction of interest and for the sake of finality, alternately we direct the Bank to settle liability with simple interest at 15% p.a. after adjusting payment already made as stated above, if appellant remits the entire liability with interest at the above rate on or before 10th February, 2010.

Writ Appeal is disposed of as above.

