(1991) 01 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4665 of 1990

Harpal Singh etc. APPELLANT

Vs

New Bank of India RESPONDENT

Date of Decision : 11-01-1991

Acts Referred:
Haryana Agriculture Credit Operations and Miscellaneous Provisions (Banks) Act, 1973 — Section 8

Citation : (1991) 99 PLR 509

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : Sarwan Gupta, for the Appellant; R.K. Aggarwal and K.D. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—The petitioners have impugned the order dated August 22, 1989 passed by respondent No. 2 u/s 8 of the Haryana Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1973 (for short, the Act) in this petition under Articles 226/227 of the Constitution of India.

2. Facts first:

The petitioners were advanced loan of Rs. 4 lacs by respondent No. 1 for the purchase of Harvestor Combine on August 4, 1984. The loan was advanced by respondent No. 1 on the terms and conditions mentioned in its letter dated June 29, 1984. The essential terms and conditions read thus : --

"(i) Repayment shall start from December, 1984 and the loan will be repaid in 10 equal half-yearly instalments of Rs. 40,000/- each besides interest.

(1-A) The party shall undertake to deal with the Bank exclusively.

(2) Bank''s name plate shall be displayed on the vehicle reading. '' The vehicle is hyp. to New Bank of India''.

(3) Combine shall be got registered with R. T. A. (Regional Transport Authority) in the joint name of borrowers and the bank.

(4) Payment shall be made directly to the suppliers by way of demand draft.

(5) First inspection report shall be submitted immediately on the receipt of the delivery of the Combine and subsequent inspections as per bank''s rules sending Inspection Reports to R/O. regularly.

(6) Land offered as collateral security shall be got regularly mortgaged in favour of the bank and mutation to this effect shall be got entered in the revenue record.

(7) The loan shall be treated as Agro Service Centre under the category ''SSI'' and reported as such.

(8) The loan shall be covered under the appropriate guarantee scheme of DCGCI and guarantee fee shall be borne by the party.

(9) IDBI refinance shall be obtained.

(10) Valuation report in respect of agricultural land shall be obtained before the release of the loan.

(11) The borrowers and guarantors appear to be agriculturist. However, in case their annual income and/assets are subjected to income tax/Weath tax, the branch will obtain latest income tax/Wealth tax Order/Returns and confirm that the contents of CRs. are correct. In case the borrowers/guarantors are not assessable under Income tax/Wealth-tax, necessary affidavits will be obtained from them to this effect, before release of the loan." Payment of the loan was guaranteed by the following persons :--

Name Net means Sh. Amarjit Singh Rs. 2.50 lacs Sh. Ranjit Singh Rs. 3.00 lacs Sh. Balbir Singh Rs. 3.23 lacs Sh. Surinder Singh Rs. 3.53 lacs

The petitioner purchased the Harvestor Combine with the loan amount advanced by respondent No. 1. It was hypothecated with the respondent-Bank as a security for repayment of the bank dues. An additional security was also furnished by the petitioners and land measursing 388 Kanals 4 Marlas was mortgaged with the Bank. The petitioners sold the Harvestor Combine for a sum of Rs, 4.00 lacs, but they did not deposit the sale proceeds with respondent No. 1 towards adjustment of its dues. The respondent-Bank called upon the petitioners to deposit the sale proceeds of the Harvestor Combine, but they failed to do so. The respondent Bank moved an application u/s 8(A)(1) of the Act on March 27, 1989, before the Sub Divisional Officer (Civil), Narwana and the same was allowed vide order dated August 22, 1989, the validity of which has been assailed in this petition on the solitary ground that the petitioners are agriculturists as defined in the Haryana Relief of Agriculture Indebtedness Act, 1989 (for short, the Indebtedness Act) and the remedy, if any, for the respondent-Bank lay under the Act and not otherwise.

3. The Indebtedness Act provides that the State Government may for the settlement between the debtors and their creditors establish Debt Conciliation Boards. A debtor or any of his creditors may apply to the Board appointed for the area in which the debtor reside to effect a settlement between the debtor and the creditor. The Board has to adjudicate the application for settlement of the dispute as provided u/s 12 of the Indebtedness Act. Section 2(b) of the Indebtedness Act defines "agriculturist" and it means whose land and whose principal means of livelihood is income from cultivation of such land or partly by income from cultivation of such land and partly by income he gets as wages in cash or kind or partly in cash and partly in kind, in connection with agricultural occupation he performs. The petitioners have not placed any material on record to prima facie establish that their principal means of livelihood is income from cultivation of land owned by them. The Indebtedness Act which is prospective in operation enables a debtor, which includes an agricultural labourer and an agriculturist to move the Debt Conciliation Board for settlement of their dispute with the creditor. In the absence of any material that the petitioners are agriculturists as defined in the Indebtedness Act, the same is inapplicable to the facts of the instant case. The loan was advanced on August 4, 1984 for purchase of a Harvestor Combine. The Harvestor Combine which was duly hypothecated with respondent-Bank could not be sold without the prior permission of the bank, but the petitioners sold the same for Rs. 4.00 lacs and they did not deposit the sale proceeds with the bank for discharging the debt. The petitioners violated the terms of the loan agreement. The respondent-Bank rightly initiated the proceedings u/s 8 of the Act against them. The order dated August 22, 1988 passed under the Act by the competent authority authorising the respondent-Bank to sell the property under mortgage with the Bank as additional security is unexceptional. It is not pointed out that the order under the Act is any was vitiated. The only ground urged that in view of the fact that the petitioners are agriculturists are defined under the Indebtedness Act, the remedy for the creditor lay under the said Act is devoid of any merit for the reasons stated supra.

4. For the reasons aforementioned, the writ petition fails and is dismissed with costs. Counsel''s fee is assessed at Rs. 1,000/-.

