(2012) 03 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8214 of 2010

M/s Sagar Hatcheries APPELLANT

Vs

Rohtak Central Cooperative Bank Ltd. and Others RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:
Haryana Co-operative Societies Act, 1984 — Section 102, 114

Citation : (2012) 166 PLR 620

Hon'ble Judges : M.M. Kumar, J;Alok Singh, J

Bench : Division Bench

Advocate : Dinesh Arora, for the Appellant; Vinod S. Bhardwaj, Addl. A.G, Haryana, for the Respondent

Judgement

M.M. Kumar, J.—The petitioner has approached this Court with a prayer for issuance of direction to the Rohtak Central Cooperative Bank Limited (first respondent) to refund a sum of Rs. 10,77,670/- deposited by them, on the ground that the first respondent has lost the litigation up to Hon''ble the Supreme Court. It has remained undisputed that the petitioner firm availed the loan of Rs. 26,15,400/- in 1995. The rate of interest mentioned in the sanction order was 17% per annum or as fixed by the Reserve Bank of India (RBI)/ National Bank for Agriculture and Rural Development (NABARD)/Registrar Cooperative Societies (RCS) from time to time. The petitioner firm filed a petition u/s 102 of the Haryana Cooperative Societies Act, 1984 (for brevity, ''the Act'') before the Deputy Registrar Cooperative Societies, Haryana (third respondent) on the ground that the rate of interest has been reduced from time to time but the first respondent did not ratably introduced reduction in the rate of interest to be charged from the petitioner. The said petition was decided in favour of the petitioner firm, vide order dated 30.1.2004, holding that the bank was entitled to recover only an amount of Rs. 21,30,206/- as principal amount and Rs. 1,19,601/- as interest as on 31.12.2003. The total amount comes to Rs. 23,22,807/-(P-2).

2. Aggrieved by the aforesaid order, the first respondent filed an appeal u/s 114 of the Act before the Government (second respondent), who upheld the order dated 30.1.2004. The first respondent still challenged the order dated 19.1.2005 (P-3) passed by the Government (second respondent) by filing CWP No. 15277 of 2005. The aforesaid petition was disposed of on 2.2.2006 (P-4) by observing as under:-

We have heard the learned counsel for the parties. From the written statement filed by respondent No. 3, it is clear that a sum of Rs. 24,43,000/- has been paid to the Bank and that No Dues Certificate has also been given by the Bank to the said respondent. Mr. Hooda, however, contends that this entire exercise was as a result of fraud and that a huge amount still remained to be recovered from respondent No. 3. In the light of the fact that No Dues Certificate has been given by the Bank to respondent No. 3, it is not possible for us to go into the question of fraud in these proceedings. We accordingly relegate the petitioner to such other remedy as may be available to it to vindicate the claim. The writ petition is disposed off accordingly."

3. The case of the petitioner before the authorities as well as before this Court was that a sum of Rs. 24,43,000/-, which was found due to the bank and it was paid on 26.7.2004 and a No Dues Certificate was stated to have been obtained. The first respondent had levelled allegation of fraud and accordingly they were relegated to any such remedy as may be available to it to vindicate the claim. It has come on record that a sum of Rs. 10,77,670/- was paid on 24.9.2007 when the first respondent was pursuing its SLP No. 19918 of 2006 before Hon''ble the Supreme Court. On the deposit of the aforesaid amount, the first respondent had released the document of mortgaged property to the petitioner, as is evident from the reply to the legal notice dated 28.1.2010 (P-8). Accordingly, Hon''ble the Supreme Court dismissed the SLP on 6.4.2009 (P-6), which was much later than the deposit of the sum of Rs. 10,77,670/-, which was deposited on 24.9.2007. It is in these circumstances that the petitioner has approached this Court.

4. In response to the notice of motion, the first respondent has filed the written statement taking the stand that the principle of estoppel would apply as the petitioner itself has opted for One Time Settlement Scheme (OTS) and had deposited the amount under that scheme. According to the averments made, the petitioner filed an application dated 24.9.2007 supported with an affidavit (R-1/1). The first respondent vide letter dated 28.9.2007 accepted the proposal under the OTS scheme and directed the petitioner to deposit a sum of Rs. 26,15,150/- as principal amount and Rs. 9,05,520/- as interest within two days (R-1/2). In accordance with the aforesaid proposal the petitioner deposited the amount under the OTS scheme of NABARD, issued by the Registrar Cooperative Societies, Haryana, vide Memo. No. 3/10/2007-C-5/6394, dated 22.6.2007. Thereafter an application dated 28.9.2007, was made to the first respondent for issuance of a No Dues Certificate (R-1/3). Even an application was filed before

the Registrar Cooperative Societies for withdrawal of the execution application to execute the order dated 30.1.2004 and 19.1.2005 (R-1/4 Colly). Accordingly, a plea of estoppel has been raised with the assertion that the writ petition would not be maintainable. There are further averments made that the No Dues Certificate was never issued before 28.9.2007 and the petitioner deliberately misled by presenting a certificate dated 26.7.2004 issued by the first respondent to him. It was in these circumstances, the petitioner was compelled to deposit the whole amount including Rs. 10,77,670/-.We have heard learned counsel for the parties. Once the petitioner has paid the whole amount under the OTS Scheme, there cannot be any possibility of resiling from such a settlement. The settlement has been reached between the parties on the basis of instructions dated 22.6.2007, circulated by the Registrar, Cooperative Societies, Haryana, which have been framed by the NABARD. It was only after the payment was made that No Dues Certificate was issued. Even orders of the High Court relegated the first respondent to resort to any other remedy for disposal of their allegations concerning fraud committed by the petitioner. The matter was pending before Hon''ble the Supreme Court and it was during the pendency of the SLP that settlement was reached and the whole amount including Rs. 10,77,670/- was deposited. After the petitioner has settled the amount and has deposited the same, it cannot now be argued that the order dated 30.1.2004 (P-2) passed by the Deputy Registrar, Cooperative Societies (third respondent) or the order dated 19.1.2005 (P-3) passed by the Government (second respondent) has to be implemented because those orders stand merged with the order of the High Court, dated 2.2.2006 (P-4) and eventually the OTS scheme reached between the parties has attained finality. The writ petition does not merit admission.

Dismissed.