
(2012) 09 AHC CK 0202
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 35480 and 64658 of 2010

Narendra Kumar Srivastava

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 40, 40(1)

Citation : (2013) 1 ADJ 749 : (2013) 2 AWC 1331

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : S.K. Mishra and S.N. Singh, for the Appellant; Mohan Srivastava, Somil Srivastava, A.S.G.I. and Smt. Rachana Dubey, for the Respondent

Judgement

Sunita Agarwal, J.—Heard Sri S.N. Singh, learned counsel for the petitioners, Sri Mohan Srivastava, learned counsel appearing on behalf of respondent No. 3 Jeewan Beema Karmchari Sahkari Sangh Samiti Limited, Varanasi (hereinafter referred to as "Samiti") and Sri Somil Srivastava, learned counsel for respondent No. 2. The controversy in both the writ petitions is that the petitioners are guarantors of one loan taken by respondent No. 4 from respondent No. 3 Samiti and the prayer is that respondent No. 3 (Samiti) may not recover outstanding amount of dues of loan towards respondent No. 4 from the petitioners. In view of the same, the two petitions were heard together and are being decided by a common judgment.

2. The case of the petitioners in the writ petitions is that the respondent No. 4 had taken loan on 1.6.2004 for an amount of Rs. 4,11,000/- for the marriage of his daughter. Petitioners are working as Development Officers in LIC, Branch Chunar alongwith the respondent No. 4. The respondent No. 4 was dismissed from service by the respondent No. 2 i.e. LIC, Branch Chunar and thereafter petitioners who are guarantors of the loan were served with two separate notices dated 22.5.2010 asking them to arrange for immediate clearance of dues of the borrower failing which the outstanding amount would be deducted from their

salary as per irrevocable guarantee agreed and signed by them. The petitioners submit that they approached the respondent authorities and filed reply/representations stating therein that the borrower, namely respondent No. 4 is having landed property including vehicle and moreover the outstanding amount should be recovered from GPF, Gratuity and other arrears payable to him lying in the department i.e. respondent No. 2. The demand notice sent to the petitioners-guarantors without adjusting the outstanding amount from the GPF, gratuity etc. is illegal and arbitrary. The respondent No. 3 could not have proceeded against the petitioners without realising the outstanding amount of loan from the dues of respondent No. 4 lying with the respondent No. 2.

3. Learned counsel for the petitioners submits that it has been brought on record in the rejoinder-affidavit that respondent No. 4 had taken loan twice. First loan was taken by him in the year 2003 for an amount of Rs. 3,64,000/- in which there were two guarantors, namely Rakesh Kumar Srivastava and Smt. Madhvi Lata Bhattacharya. He further submits that the present loan for which the proceedings have been initiated against the petitioners is the second loan amounting to Rs. 1,15,000/- and was sanctioned on 1.6.2004. Both the petitioners Mahendra Singh and Narendra Kumar Srivastava are guarantors in the second loan and the petitioners have nothing to do with the loan sanctioned in the year 2003 for the amount of Rs. 3,64,000/-. The respondent No. 3 Samiti has wrongly merged both the loans and issued demand notice against the petitioners. The respondent Samiti ought to have proceeded against the guarantors of the earlier loan sanctioned in the year 2003. The first loan taken in the year 2003 cannot be adjusted against the second loan.

4. His second submission is that in any case, the proceedings could not have been initiated against the guarantors without satisfying the dues from the benefits, namely GPF, gratuity etc. which are to be paid to the borrower by the employer respondent No. 2.

5. A counter-affidavit has been filed on behalf of respondent No. 3 Secretary of the Samiti. Sri Mohan Srivastava, learned counsel for the respondent No. 3 drawn attention of the Court to the deed of guarantee executed by the petitioners annexed with the counter-affidavit and stated that the loan amount which was sanctioned in the year 2004 was for total sum of Rs. 4,11,000/- and as per the deed, the guarantee was given by the petitioners against the said loan. They cannot turn around and say that Samiti has wrongly merged the previous loan with the subsequent loan. Infact, the earlier loan was liquidated and subsequently, in the year 2004 loan for Rs. 4,11,000/- was sanctioned on the guarantee given by the petitioners jointly. He further submits that respondent No. 3 is a Society registered under the Societies Registration Act and the main purpose of the Society is to provide loan on reasonable rate to its members for their personal needs. As per bye-laws of the society, no loan can be sanctioned unless the same is guaranteed by one or more members of the society. As per the provisions of the Section 40(1) of the U.P. Co-operative

Societies Act, 1965, the member has to execute contractual obligation in favour of the society providing thereby that the employer of the member shall deduct the salary and other expenses for payment as specified in the contract and remit the said deducted amount to the society for adjustment towards the loan.

6. He further submits that in view of Section 40 of the U.P. Co-operative Societies Act, the obligation on the part of employer for deduction of co-operative dues as per authority executed by the member is restricted to his wages or salary only and the provision does not include other amount like PF or other terminal benefits to be received by the concerned member. It is in the said scenario, the respondent No. 3 Samiti proceeded to recover the outstanding amount of loan from the guarantors who had undertaken guarantee that in case of default in payment of loan by the borrower for more than three months, the outstanding loan shall be recovered and deducted from their salary.

7. He has drawn attention of the Court towards the deed of guarantee executed by the petitioners annexed with the counter-affidavit. He further submits that the petitioners having entered into an agreement with the society out of their free will for recovery of the loan amount from their salary, cannot be allowed to raise the dispute before this Court. The respondent no 3 is free to recover the amount from their salary and the representations, if any, moved by the petitioners are of no relevance.

8. Heard learned counsel for the parties and perused the record.

9. In so far as the first contention raised by the learned counsel for the petitioners that the loan against which they have given guarantee was for an amount of Rs. 1,15,000/- and they cannot be held liable for the previous loan sanctioned in the year 2003, the reference be made to the letter dated 4.8.2011 written by the Secretary of the society to the petitioner annexed with the rejoinder-affidavit in writ petition No. 64658 of 2010 (Mahendra Singh v. Union of India and others) which clearly indicates that on the application moved by the borrower respondent No. 4 Sri Pramod Singh, the previous loan was liquidated and merged in the subsequent loan sanctioned to him on 1.6.2004. The total amount of the loan sanctioned on 1.6.2004. is Rs. 4.11 lacs and the petitioners namely Mahendra Singh and Narendra Kumar Srivastava are the guarantors of the said loan. A further perusal of deed of guarantee signed by the guarantors-petitioners also establishes that the guarantee was given for the amount of loan which was Rs. 4.11 lacs and not Rs. 1.5 lacs as alleged by the petitioners. The application submitted by the borrower respondent No. 4 Pramod Singh alongwith the deed of guarantee has been annexed with the counter-affidavit.

10. Further submission of the learned counsel for the petitioners that the outstanding amount of loan is to be recovered first from the benefits payable to the borrower by the employer, namely respondent No. 2 and only after making deduction from the payments due to respondent No. 4 lying with the employer, the recovery could have proceeded against the guarantors. After perusal of the

contents of paragraphs 12(3) and (5) as also the application form duly forwarded by the Senior Manager, LIC, Chunar Branch it is clear that while approving the grant of loan, there was an agreement between the society and the borrower that the loan can be recovered from service benefits other than salary. The authority letters, namely Authority letter-I, Authority letter-II and Authority letter-III (Annexures to the application form) show that the charge was created over the salary as also other service benefits available to the borrower. As per Authority letter-I duly forwarded by Manager of the LIC, Branch Chunar, the loan amount can be deducted and realized in the following manner:

- (1) Salary.
- (2) Any amount due in a policy.
- (3) Gratuity, Leave encashment and other terminal benefits.
- (4) pension, and any other amount to be received by the respondent No. 4 under Group insurance Scheme or any other policy.
- (5) In case of suspension, from the subsistence allowance.
- (6) Any kind of dues which the corporation (LIC) is liable to pay, to the borrower.

11. The said document was signed by the respondent No. 4 borrower and, forwarded by the respondent No. 2 employee and was accepted by the respondent No. 3 Samiti. Further, Authority letter-II and III show that borrower had given authority to deduct loan from Provident Fund and from any amount such as LIC etc. payable to him in the event of him not being in service of the LIC for any reason.

12. For the sake of convenience, the paragraph Nos. 12 and 13 of the counter-affidavit filed by the respondent Samiti are quoted below:

12. That main Procedure and requirements for grant of loan as approved by the society are as under:

- (1) Loan shall be granted to the member depending upon his length of Service, Gross and Net emoluments and share capital held in society. (condition 1).
- (2) Loan shall be paid to the members on the security of two guarantees acceptable to the society, (condition 2).
- (3) To get loan from society, the member shall fulfill following formalities without fail alongwith application (condition 3).
 - (i) Promissory note in favour of Society.
 - (ii) Certification of Salary & Service Particulars and forwarding recommendation by the employer.
 - (iii) Authority letter to Employer for deduction of loan recovery installments from salary and other amounts."

- (iv) Authority and acceptance of charge over P.F.
 - (v) Authority and acceptance of charge over pension.
 - (vi) Guarantee
 - (vii) Authority letter by guarantors to their employer for deduction from salary and other payments.
- (4) That it will be the responsibility of the guarantor to acquire knowledge and information about eligibility, paying capacity and all financial, physical or moral hazard relation to repayment of loan on the part of the loanee and enter into the obligation of guarantee only after being satisfied on all counts as the guarantor shall become immediately responsible of repayment of loan together with interest thereon immediately after recovery becoming under default from the loanee.
- (5) It has been clearly provided under caption at
- Serial (1) the guarantor shall be personally and jointly with the loanee responsible for.
- (i) Total repayment of loan and interest thereon.
 - (ii) Regular remittance of EMI for repayment of loan interest to the Society.
 - (iii) Repayments/reimbursement of all expenses incurred in connection with recovery of loan and interest.
 - (iv) Utilisation of loan in purpose specified in the applications within one month from receipt of loan.
- (6) That it has further been clarified at serial No. 5 that in case of Regular EMI deductions of Regular loan repayment from the salary of the loanee becoming in default for three months in continuation, proportionate recovery of dues shall be commenced from the salary of the guarantor."
13. That keeping in view the above mentioned requirements and obligations, the loan application form covering all required aspects of loan application, salary and service particular certification and forwarding by the employer, guarantee, guarantee authority, Promissory note and authority of deduction from salary, P.F. and Pension have been devised in the prescribed format on which loan is to be applied alongwith guarantees.
13. Further, in paragraph 24 of the counter-affidavit, the respondent No. 3 has submitted that he has notified respondent No. 2 about the outstanding dues of the Samiti against respondent No. 4 and asked to deduct and settle the same from terminal benefits payable to respondent No. 4 as per authority executed by him, but no amount as on date has been received by the respondent No. 3 from respondent No. 2 although respondent No. 4 has been dismissed since 31.8.2009.

14. In paragraph 27 of the counter-affidavit, respondent No. 3 submitted that taking recourse of dues through mortgaged/hypothecation of properties is cumbersome, time taking, complicated and expensive and with this objective, the cooperative societies are relieved from such complexity and exercise and provided for credit on the basis of fellow members" guarantee only.

15. Section 40(1) of the U.P. Co-operative Societies Act, 1965 relied upon by the respondent No. 3 in order to submit that there is an obligation on the part of the employer for deduction of cooperative dues as per the authority executed by the member only from the wages or salary and under the said provision, the same cannot be recovered from other amount, namely PF etc., is quoted below:

40. Deduction from salary to meet society"s claim in certain cases.--

(1) Notwithstanding anything contained in any law for the time being in force, but subject to such conditions, if any, as may from time to time be laid down by the State Government, a member of a co-operative society may execute an agreement in favour of the society providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member of the society.

16. Learned counsel for the respondent Samiti further submitted that after receipt of the demand notice, the petitioners have failed to make any effort to ensure clearance of dues from respondent No. 4 by approaching him personally or otherwise, Petitioners have failed to fulfill their legal and compulsorily obligation and they being guarantors, outstanding loan amount is to be realized from their salary/other payments etc.

17. A perusal of the documents of record and the submissions made by the learned counsel for the parties, it is evident that petitioners are guarantors of the loan for an amount of Rs. 4,11,000/- sanctioned in the year 2004. However, the loan amount was to be realised first from the salary of the borrower and then from the benefits payable to him. As per the authority letter, the Samiti had agreed to realize the loan amount from the salary and further from other benefits namely, GPF, pension, gratuity etc. In view of the said agreement executed between the Samiti and the borrower, the stand taken by the Samiti that the amount should be realised only from the salary of the borrower and not; from other service benefits payable to him cannot be accepted.

18. The application form for loan sanctioned contains the details of salary and service benefits and was duly forwarded by the employer i.e. Senior Manager of the LIC Branch Chunar. The Samiti in the counter-affidavit itself came out with the case that charge was created over PF and pensionary benefits and other amount payable to borrower employee. The authority of deduction from salary, PF and pension have been devised in the prescribed format on which loan was applied. It further submitted that outstanding dues of loan has been notified to

the employer and it was asked to settle the same and send the amount payable to the respondent No. 4 for satisfying the same. However, they have received no response from the respondent No. 2.

19. The reliance placed by the learned counsel for the respondent No. 3 upon the provision of Section 40(1) of the U.P. Cooperative Societies Act, 1965 is incorrect in view of assertions made in paragraphs 12 and 13 of the counter-affidavit as discussed above. The authority letters annexed with the prescribed proforma on which loan was sanctioned further substantiate the fact that the Samiti had agreed to realize the loan from other benefits, namely GPF, pension gratuity etc. after deduction of the same by the employer.

20. The submission of learned counsel of the respondent Samiti that process of recovery of dues against the mortgaged property is cumbersome and therefore, the Society proceeded to realize the amount from the fellow member guarantors, cannot be accepted in view of the authority letters given by the borrower.

21. In view of the above discussion, It is directed that the respondent No. 2 LIC shall calculate the amount, if any, towards GPF, gratuity etc. payable to respondent No. 4 and after satisfying its own dues, if any, deduct the remaining amount and forward the same to the respondent No. 3 Samiti for satisfaction of the outstanding amount of loan. The entire exercise is to be completed by the respondent No. 2 within a period of one month from the date copy of this order is produced before respondent No. 2.

22. The respondent No. 3, after receiving the amount, if any, from the respondent No. 2 shall adjust the same towards outstanding dues of loan of respondent No. 4. Thereafter, a statement of account shall be prepared and handed over to the petitioners who are guarantors. The respondent No. 3 Samiti shall thereafter proceed against the guarantors, in case any loan is due, for recovery of the same as per the deed of guarantee executed by them after giving fresh notices of demand.

23. The writ petition is allowed in part with the observations made above. Both the demand notices dated 22.5.2010 issued to the petitioners are hereby quashed. A writ of mandamus is issued to the respondent No. 3 not to deduct the outstanding loan of respondent No. 4 from the salary of the petitioners till the entire exercise as directed above is completed.