(2009) 04 P&H CK 0240

In the Punjab And Haryana At Chandigarh

Prem Singh APPELLANT

Vs

Financial Commissioner, Department of Cooperation and Others RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 154 PLR 723

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner, who has retired as Assistant Manager from, the Gurdaspur Central Cooperative Bank, Gurdaspur (hereinafter referred to, as ''the respondent bank''), has filed this petition under Article 226 of the Constitution of India for quashing the order dated 18.3.2008 (Annexure P-10), passed by the Registrar, Cooperative Societies, Punjab (respondent No. 2 herein), whereby while allowing the revision petition filed by the respondent bank, the order dated 29.10.2007, passed by the Deputy Registrar, Cooperative Societies (Enforcement), Punjab (respondent No. 3 herein), has been set aside and the respondent bank has been permitted to retain an amount of Rs. 2,50,800/- out of the retiral benefits of the petitioner, which was due against the loanee, namely M/s Mangat Ram Shuttering Store, Bambial (hereinafter referred to as ''the loanee firm''), with a condition to reimburse the same to the petitioner, if the same is recovered from the loanee firm and its guarantors.

2. The petitioner, while posted as Branch Manager at Narot Jaimal Singh, Tehsil Pathankot, District Gurdaspur, had committed various acts of omissions and commissions. He processed the loan application of the loanee firm and while wrongly evaluating the property, which did not exist at all, he recommended to the higher authorities for grant of loan of Rs. 2,35,000/- to the loanee firm. On the basis of the said recommendation, the said loan was sanctioned. The

petitioner also illegally provided two cash credit limits of Rs. 2.15 lacs and Rs. 2.60 lacs in the name of his two sons. For those illegalities, the petitioner was charge sheeted in the year 2003. In the enquiry, the charges were duly proved. After the enquiry, when a show cause notice along with copy of the enquiry report was sent to the petitioner, he challenged the said show cause notice. The same was set aside by the Additional Registrar, Cooperative Societies, while holding that the Supervisory Officer could not have issued the show cause notice. Again the show cause notice was issued to the petitioner. During the pendency of the same, the petitioner filed a writ petition in this Court praying for quashing the order of his suspension. In view of the written statement, filed by the respondent bank that since the enquiry report has already been finalized in the charge sheet issued to the petitioner and the respondent bank will take a final decision on the said enquiry report within the stipulated time, the said writ petition was dismissed as infructuous. Finally, show cause notice dated 24.3.2006 (Annexure P-S) was issued to the petitioner, proposing the punishment of his dismissal from service. When the petitioner was directed to appear in person before the punishing authority, he submitted an affidavit dated 29.3.2006 (Annexure P-7) categorically stating therein that the cash credit limits of Rs. 2.15 lacs and Rs. 2.60 lacs in the name of his two sons may be deducted from his retiral dues. In the affidavit, he further stated that the amount of loan outstanding against the loanee firm be also deducted from his retiral dues and be kept in suspense account. The petitioner had taken the said stand before the punishing authority, so that he could have taken the benefits of his retiral benefits, because he was going to retire on 31.3.2006. On the basis of the said affidavit and the stand taken by the petitioner before the punishing authority, a lenient view was taken and instead of passing the order of dismissal, suspension of the petitioner was revoked and he was reinstated with certain conditions, including the following two conditions:

(1) Outstanding amount of loan of Sh. Rajiv Singh, Paramjit Singh shall be deducted from the pay/retiral dues and other dues.

(2) The amount equal to loan of Shri Mangat Ram shall be kept in the suspense account after deducting from the pay, retrial dues etc. of Sh. Prem Singh and after 31.7.2007 the amount which will be standing towards debit in the account of Shri Mangat Ram shall be deducted from the aforesaid suspense account.

3. After his retirement and receiving all the retiral dues after deduction of the aforesaid two amounts, the petitioner challenged the condition No. 1 before the District Consumer Redressal Forum, Gurdaspur, on the ground that the amount of cash credit limits due against his sons cannot be recovered from his retiral dues. Initially, the District Consumer Redressal Forum allowed his complaint, but on an appeal filed by the respondent bank, the said order was set aside by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh, vide its order dated 28.3.2007 (Annexure R-3/1), while making observation that once an undertaking in the shape of affidavit was given by the petitioner, which was

followed by a conscious order of the disciplinary authority, the bank was fully justified to appropriate the amount towards the cash credit limits of his two sons.

4. Subsequently, the petitioner also filed an appeal before the Deputy Registrar, Cooperative Societies (Enforcement), Punjab, challenging the second condition of the order dated 29.3.2006. The said appeal was allowed on the ground that the circumstances in which the affidavit was furnished by the petitioner authorising the bank to deduct the loan amount of the loanee firm from his retiral benefits, were doubtful. It was observed that if the loanee firm did not pay the loan amount, the management of the bank should have initiated arbitration proceedings under the provisions of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as ''the Act''), against the borrower and the guarantors. Against the said order, the respondent bank filed revision petition before the Registrar, Cooperative Societies, Punjab, which has been allowed vide order dated 18.3.2008 (Annexure P-10) and the order of the Deputy Registrar has been set aside, while making the following observations:

I have heard both the learned Counsel and seen the record of the case. It is an admitted fact that affidavit furnished by Sh. Prem Singh is genuine. The only thing that he has contended is that he gave it into pressure in view of his impending retirement. It is also clear from the record of the case that the loan was advanced based on his recommendations and evaluation of property done by him. The deductions from his salary/retiral benefits were made for recovery of loan on his own offer through an affidavit. After obtaining retirement, he cannot turn around and state that the affidavit was given under pressure and that he should be repaid whatever was deducted from his retiral benefits and thus absolve himself of the responsibility. In view of this and having carefully considered his plea, I hold that the bank is entitled to retain the money as per his own admission and acceptance in his affidavit. The Deputy Registrar (Enforcement), Cooperative Societies, Punjab in the impugned order has held that the affidavit was doubtful and obtained under pressure. Since this has not been established on record at all, I accept the revision on this issue and allow the bank to retain the dues recovered from Prem Singh based on the commitment made by Sh. Prem Singh in his affidavit.

The bank is hereby directed that after effecting recovery from the firm and guarantors, the retiral benefits, presently deducted from Sh. Prem Singh may be reimbursed to him, after making good the amount due to the bank and the cost of litigation thereof. Till then the bank is entitled to retain the money as recovery effected from Sh. Prem Singh against this defaulted loan as per the commitment given in the affidavit furnished by him. The bank may proceed on the above lines immediately in a time bound manner as per the provisions of law to effect recovery from the defaulting firm and the guarantors.

I have heard Counsel for the parties and gone through the various orders. During the course of arguments, learned Counsel for the respondent bank has drawn the attention of the Court towards photo copy of the application form (Annexure

R-3/2), submitted by the loanee firm for the grant of loan. The said application has been filled up by the petitioner himself and he had made the following recommendation for the grant of loan to the loanee firm:

Sh. Mangat Ram s/o Sh. Kalu Ram V.P.O. Bamial has applied N.F.S Loan Rs. 2,35,000/- only to establish M/s Mangat Ram Shuttering Store. I know very well above person and he is experienced man. Valuation report of plot & shop Rs. 4,84,000/- only is attached in this case. So I recommend the N.F.S Loan Rs. 2,35,000/- only. Rs. Two Lac Thirty Five Thousand only. Submitted to H/O for sanction please. Block Capital Rs. 55.000/- Working Capital Rs. 1,80,000/- Total Rs. 2,35,000/-.

5. It is conceded position that when the loan amount was not paid by the loanee firm, die respondent bank raised an arbitration u/s 55/56 of the Act for recovery of the loan amount against the loanee firm and one of its guarantors. The Award was passed in favour of the respondent bank. When efforts were made to make recovery of the amount on the basis of the said Award, it was found that neither any plot nor any shop, as mentioned in the loan application, are existing. Counsel for the petitioner could not controvert this factual position. Thus, its appears that a false and fabricated verification, valuation and recommendation was made by the petitioner in favour of the loanee firm, on the basis of which a laon of Rs. 2,35,000/- was sanctioned and advanced to the said firm, which could not be recovered because of non-existence of the mortgaged property.

6. In light of this factual position, the petitioner, in order to avoid his dismissal from service (as in the event of dismissal, he would not have been entitled for any retiral benefit), submitted the affidavit dated 29.3.2006 (Annexure P-7). Keeping in view these facts, the Registrar, Cooperative Societies, Punjab, came to the conclusion that the said affidavit was not executed in any suspicious circumstance or under duress. Even otherwise, before the Deputy Registrar or in his grounds of appeal filed against the decision of the punishing authority of the respondent bank, the petitioner never pleaded that he had furnished the said affidavit under any duress.

7. Thus, in my opinion, the Registrar, Cooperative Societies, Punjab, has rightly set aside the order passed by the Deputy Registrar, Cooperative Societies and has upheld the order passed by the management of the respondent bank withholding an amount of Rs. 2,50,800/- from the retrial dues of the petitioner. As is clear from the impugned order, this amount has not been permanently withheld. It will be kept in suspense account. As and when the loan amount is recovered from the loanee firm or its guarantors, the same will be reimbursed to the petitioner, after making good the amount due to the respondent bank and the cost of litigation thereof. Therefore, I am of the opinion that the impugned order is perfectly legal, valid and reasonable and no interference in the same is required by this Court in the writ jurisdiction.

8. In view of the above, there is no merit in the instant writ petition and the

same is, hereby, dismissed.

