
(2013) 06 KL CK 0068
In the High Court Of Kerala
Case No : W.A. No. 1889 of 2009

Raju M. Thomas

APPELLANT

Vs

Urban Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 69

Citation : (2013) 3 KHC 89 : (2013) 3 KLT 417

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : T.V. George and Jimmy George Thadathil, for the Appellant; P. Parameswaran Nair and T.P.M. Ibrahim Khan) and Shaji Thomas Porkkattil, for the Respondent

Judgement

S. Siri Jagan, J.—A poor agriculturist is the appellant herein. He is aggrieved by the judgment of a learned Single Judge of this Court in W.P. (C) No. 4001/2009. The judgment reads as follows: 1. Petitioner claims to be an agriculturist, having 4.5 acres of land. He made an application to the second respondent for financial assistance under the Haritha Cash Credit Scheme. Cash credit facility with an upper limit of 2 lakhs was sanctioned to the petitioner on 13.7.2005 and was disbursed on 19.7.2005. It is stated that, unlike the usual loan granted by the financial institutions with monthly payment of instalment consisting of principal and interest, this scheme is more in the nature of an overdraft facility and the petitioner was entitled to draw amount up to Rs. 2 lakhs, with liability to pay interest on quarterly basis. The credit facility was granted for a period of 3 years.

2. Petitioner committed default in paying interest and Exts. P1 and P2 notices issued in this behalf did not evoke any response. Finally, the Bank filed A.R.C. No. 617/07 resulting in Ext. P4 award dated 19.6.2007. In the award a decree enabling the Bank to recover 2,38,224/- with interest at 12% on Rs. 2 lakhs from 19.7.2005 was passed. Even thereafter payment was not made and in the meantime, the Government of India introduced Agricultural Debt Waiver and Debt

Relief Scheme, 2008, a copy of which is Ext. R2 (a). On 30.7.2008, petitioner submitted a representation to the first respondent, claiming the benefit of the said scheme. The claim was considered and by Ext. P5, the benefit was declined. It is thereupon that this Writ Petition is filed, challenging Ext. P4 and claiming the benefit of Ext. R2(a) scheme referred to above.

3. Relying on the various provisions of Ext. R2(a), counsel for the petitioner contends that, the loan availed of by him was an investment loan and that the petitioner being a small farmer, having less than 2 hectares of land, was eligible for the benefit of the scheme. It is also stated that, the liability due from him satisfied the conditions provided in clause 4(1)(b) of the scheme, in as much as it was disbursed prior to 31st March, 2007 and was remaining unpaid till 29.2.2008. It is therefore contended that, the view taken in Ext. P5 is that the amount was overdue only as on 19.7.2008 is incorrect.

4. On behalf of the respondent Bank, the contention raised is that the period of credit facility expired only on 13.7.2008. Therefore, according to them, the amount was not overdue as on 31st December, 2007, in which event only the petitioner can claim the benefit of Ext. R2(a) scheme.

5. I have considered the submissions made. The argument of the petitioner is that, although 3 year period specified at the time of sanctioning loan expired only on 31.7.2008, the Bank obtained Ext. P4 award on 19.6.2007 and since the petitioner did not pay the amount due under the award, the amount due under the award was remaining outstanding as on 31st December, 2007 and therefore the petitioner comes within clause 4.1(b) of Ext. R2(a) scheme. Going by the Scheme, the amount should be disbursed prior to 31st March, 2007 and the petitioner satisfied this condition in as much as the loan was sanctioned and disbursed on 19.7.2005.

6. The second requirement is that the amount should be overdue as on 31st December 2007. Since the period of loan facility granted to the petitioner was 3 years, the period expired only on 13.7.2008. If that be so, the petitioner cannot say that his liability was overdue as on 31st December, 2007. On the other hand, if the liability is to be taken one under Ext. P4 award, in my view the petitioner will not be eligible for the benefit of the scheme. This is for the reason that waiver contemplated in Ext. R2(a) is the waiver of the agricultural debt and not a debt arising under an award. If that be so, the debt under the award cannot be equated as an agricultural debt and such a debtor cannot claim the benefit of Ext. R2(a) scheme. If so, the petitioner cannot contend that as on 31st December, 2007, any agricultural liability was outstanding to be eligible for the benefit of the scheme. For the aforesaid reasons, Ext. P5 does not deserve to be interfered with.

Writ Petition fails and is dismissed.

The contention of the appellant is that, the appellant applied for an agricultural loan and they have terminated the loan agreement and filed an A.R.C. under S.

69 of the Kerala Co-operative Societies Act for recovery of the entire loan amount with interest, on 28.3.2007. As per the agricultural debt relief scheme of the Government of India, which has been adopted by the second respondent Co-operative Bank, any loan the amount of which was overdue as on 31.12.2007, is eligible for the benefit of the scheme. Insofar as, the bank has filed the A.R.C. on 28.3.2007, for recovery of the entire loan amount, the loan amount had become overdue before 31.12.2007. It is further submitted that the learned Single Judge had dismissed the Writ Petition on the ground that, once the loan has been recalled and Ext. P4 award has been passed, the loan loses the character of an agricultural loan, which is totally wrong.

2. According to the appellant, an agricultural loan is always an agricultural loan, notwithstanding the fact that, the bank has filed an A.R.C. for recovery of the loan and obtained an award. The counsel for the appellant submits that there is no clause in the scheme, which would go to show that once an award is passed, the agricultural loan would lose its character as an agriculture loan. Therefore, according to the appellant, the appellant is entitled to the benefit of the scheme and therefore, the learned Single Judge went wrong in dismissing the Writ Petition.

3. The learned counsel for the second respondent bank submits that, the bank is only an agent of the NABARD, and unless the bank disburses the relief covered by the scheme strictly in accordance with the provisions of the scheme, the NABARD will not reimburse the amount paid by the bank to the appellant. It is pointed out that under clause 4(1)(b)(i) only loans disbursed up to March 31st, 2007 which overdue as on December 31st, 2007 and remaining unpaid until February 29th, 2008, would be eligible for the benefit of the scheme. The contention of the 2nd respondent is that insofar as, the period of loan was three years from 19.7.2005, which would expire only on 18.7.2008, the loan was not overdue as on 31.12.2007. Consequentially, the appellant is not entitled to the benefit of the scheme is the contention raised. In support of this contention, the counsel for the second respondent/bank would point out that the loan was classified as NPA, since the appellant did not pay the interest due on the same, and no part of the instalment of repayment of the loan account was overdue as on 31.3.2007. Consequentially, the appellant cannot claim that the loan is one which comes within the purview of the scheme is the contention raised. It is also contended that the loan is not an agricultural loan, insofar as, the appellant was given only a cash credit facility.

4. We have considered the rival contentions in detail. Admittedly, the bank had filed the A.R.C. for recovery of the entire loan amount with interest on 28.3.2007. The bank cannot file an A.R.C. for recovery of the entire loan amount, unless the repayment of loan has become overdue. If only the interest was overdue, the bank could have only sought to recover the interest alone by resorting the appropriate proceedings. Once the bank has decided to terminate the loan agreement and to recall the loan, that essentially means that, the entire

loan amount has become overdue. There is no logic in saying that the loan amount has not become overdue as on 31.12.2007 after filing an A.R.C. to recover the entire loan amount on 28.3.2007. Therefore, we do not find any merit in the contention of the 2nd respondent bank that in view of clause 4(1)(b) (i) of the scheme, the loan amounts have not become overdue as on 31.12.2007.

5. In view of the specific contention of the 2nd respondent bank that the loan given to the appellant is not an agricultural loan, we directed the bank to produce the application for loan submitted by the appellant. The same has been produced in the Writ Appeal as Annexure- R2(a). The same specifically states that the purpose of the loan is for the development of agriculture, and it also specifically says that it is a loan under "Haritha Scheme" for cash credit. It is not disputed before us that the "Haritha Scheme" is an agricultural loan scheme. Simply because the bank has chosen to give the loan in the form of a cash credit account, the loan does not lose the character of an agricultural loan. Therefore, we do not find any merit in that contention of the 2nd respondent bank also. The reasoning given by the learned Single Judge that, once Ext. P4 award has been passed, the loan loses the character of agricultural loan also does not appear impressive. We are of the opinion that the award is only for recovery of the loan amount. Therefore, the award also continues to be for recovery of an agricultural loan, and the loan remains an agricultural loan throughout notwithstanding the passing of the award.

For all these reasons, we are of the opinion that the denial of the benefit of the scheme to the appellant is unjustifiable. Accordingly, we set aside the judgment of the learned Single Judge, allow the Writ Petition quashing Ext. P5 order passed by the Grievance Redressal Officer, and directing the respondents 1 and 2 to sanction the benefits of the debt waiver scheme to the appellant as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.