(2016) 07 RAJ CK 0087

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 996 of 2005 In Civil Writ Petition No. 3109 of 1998

Ram Kalyan Mahajan APPELLANT

Vs

Up Zila Collector, Dausa RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Rajasthan Agricultural Credit Operations (Removal of Difficulties) Act, 1974 — Section 13(1)

Citation : (2016) 4 DNJ 1587 : (2016) 2 WLCRajUC 340

Hon'ble Judges : Mr. Navin Sinha CJ and Mr. Vijay Kumar Vyas, J.

Bench : Division Bench

Advocate : Mr. Rakesh Kumar, Advocate, for the Appellant; Mr. M.M. Ranjan, Senior Advocate assisted by Ms. Nikita Sud, Advocate, for the Respondent Nos. 4 to 6

Final Decision : Dismissed

Judgement

Navin Sinha C.J.—The present appeal arises from order dated 12/09/2005 dismissing S.B. Civil Writ Petition No. 3109/1998 declining to interfere with the auction of the lands of the appellant consequent to his failure to repay the loan taken by him from the respondent-bank.

2. Learned counsel for the appellant submits that no statutory notice under Section 13(1) of the Rajasthan Agricultural Credit Operations (Removal of Difficulties) Act, 1974 was ever served upon him. The entire proceedings before the Deputy Collector for recovery were therefore illegal. Against a loan of Rs. 70,000/- only for purchase of a tractor, a illegal demand was raised for Rs. 1,73,620/-. Instead of auctioning the tractor, his lands have been illegally auctioned, which was never the subject matter of the loan. The deposit of Rs. 10,000/- has not been taken into consideration while calculating the accounts. The property has been sold for a value much higher than the loan and therefore the enrichment during auction must be given to the appellant after satisfaction of

the loan.

3. Learned counsel for the respondents have opposed the appeal submitting that the loan was taken as far back as 26/06/1982 under a written agreement signed between the appellant and the bank. There is no challenge to the same. The agreement provided for charging interest in the manner prescribed. The dues are inclusive of interest. The appellant had hypothecate his lands under the agreement for the loan. Statutory notice was sent to the appellant by registered post as mentioned in the counter affidavit. There was no rejoinder to the same. The amount of Rs. 10,000/- alleged to have been deposited has been duly taken note of by the Deputy Collector in the order-sheet dated 05/01/1996. The accounts were furnished, which he accepted and offered to deposit further Rs. 25,000/- but despite repeated opportunities, failed to do so and in fact stopped appearing before the Deputy Collector. The appellant adopted an approach of procrastination to find ways and means and prevent adjudication by refusing to discharge the loan. The order of the learned Single Judge notices the dilatory practices adopted by the appellant to evade payment of the loan. The order of the learned Single Judge calls for no interference.

4. We have considered the submissions on behalf of the parties.

5. The appellant does not deny the factum of the loan taken by him from the bank. There is no denial of the agreement executed between the parties with regard to the same. The rate at which interest was to be charged was specified in the agreement. The appellant had hypothecate his agricultural lands as security for the loan.

6. Non-repayment led to a statutory notice under the Act to him on 03/02/1994 sent by registered post. There will be a presumption that a registered letter reached its destination under Section 114(e) of the Evidence Act unless it is rebutted by the addressee leading evidence in denial. The appellant baldly takes the stand that notice was not received by him but does not explain how he became aware of the proceedings and entered appearance before the Deputy Collector suo moto after the auction notice.

7. Likewise, the appellant contends that he has repaid Rs. 50,000/- out of the principal amount of Rs. 70,000/- but his reply dated 28/03/1994 filed before the Deputy Collector does not mention the date of repayment or the manner in which it was deposited. Furthermore, it does not appear from the order-sheet of the Deputy Collector that he took the said stand at any time. On the contrary, after several adjournments, he deposited a sum of Rs. 10,000/- only on 05/01/1996. Thereafter, he sought several adjournments and agreed to deposit Rs. 25,000/- more but did not do so in spite of several dates and in fact stopped appearing. In the circumstances, auction was ultimately directed on 08/08/1997. The order-sheet of the Deputy Collector also reflects that the accounts were explained to the appellant, which he accepted. The loan given to the appellant by the bank was public money from the tax payers funds. Resorting to litigation he has

successfully evaded payment. It was acknowledged that the lands have been auctioned but a defence was taken that the possession was still with him. Retention of possession contrary to the law cannot ensure to the benefit of the appellant as interim-order granted to him on 19/10/2005 also lapsed after four weeks.

8. The order of the Deputy Collector also notices that the entire auction price has been deposited by the purchaser. The commission has been directed to be deposited with the Government office. No claim for enrichment amount was raised in the writ petition.

9. We find no reason to interfere with the order under appeal but leave it open to the appellant to pursue his remedy, if any, in accordance with law with regard to his grievance concerning any amount fetched in auction in excess to the dues.

10. The writ appeal is dismissed.

