(2014) 03 KL CK 0094

In the High Court Of Kerala

Case No : WA. No. 217 of 2014 in WP(C). 30975/2013

Sulochana APPELLANT

Vs

The Authorized Officer/Accounts Officer RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:
Kerala Revenue Recovery Act, 1968 — Section 49

Citation : (2014) 03 KL CK 0094

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : Abraham Mathew (Vettoor), Advocate for the Appellant; George Boban, SC, K.S.H.B, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K.M. Joseph, J.—The appellant is the writ petitioner. Her husband availed the housing loan from the respondents. Ext.P4 notice was issued to the petitioner. She challenged Ext.P4. Ext.P4 is actually sale proceedings u/s 49 of the Kerala Revenue Recovery Act. She approached this court seeking the following reliefs;

i). Issue a writ of certiorari or any other appropriate writ order or direction quashing Ext.P4.

ii). Issue a writ of mandamus or any other appropriate writ order or direction commanding the respondents 1 to 4 to extend One time Settlement facility with installment facility to liquidate the liability on account of the housing loan availed by the petitioner''s late husband;

iii). Declare that the respondents are not entitled to demand or recover interest in excess of the principal amount at no point of time during the pendency of the as the rule of ''damdupat'' is applicable to the mortgaged liability created by the petitioner''s husband.

2. Briefly put, the case of the appellant is as follows;

The petitioner''s husband had availed a housing loan of Rs. 1,50,000/- from the respondents in the year 1999 and he died of cardiac arrest on 28/02/2000. Consequently, the unemployed petitioner, who has to maintain two minor children could not repay the loan as the sole earning member of her family, died. The respondents had fixed monthly installments for repayment of the loan at the rate of Rs. 2,850/- per month. The said monthly installment is one arrived at on applying interest at the rate of 12.25% on the principal amount of Rs. 1,50,000/- for the repayment period. Thus the respondents had already applied interest on the loan amount at 12.25 % while stipulating the monthly installments.

Alleging default on repayment of the loan, the 1st respondent has now put the mortgaged property for sale for recovery of Rs. 4,06,815/- with further interest and costs. On enquiry with the respondents, she has been directed to remit Rs. 7,51,880/- to settle the liability, which would clearly establish that the respondents have applied exorbitant interest and penal interest on the defaulted installments which has been drawn up applying interest.

Even though the respondents have extended One Time Settlement facility on total waiver of penal interest and 70% waiver of interest to several borrowers, such a facility has not been extended to the petitioner. The petitioner is prepared to settle the liability to save her residential property provided she is given such a facility applying interest on the loan amount of Rs. 1,50,000/-. The One time Settlement facility is a non discretionary and non discriminatory facility and the petitioner is fully entitled for the benefit of the same. Hence the petitioner seeks to quash Ext.P4 directing the respondents to extent One Time Settlement facility on 100% waiver of the penal interest and waiver of 70% of the interest charged on the principal amount of Rs. 1,50,000/- instead of the aggregate of the installment amounts. Hence this writ petition.

3. The learned Single Judge disposed the writ petition declaring that the appellant need remit only Rs. 4,27,359/- under the One Time Settlement Scheme as on 31/12/2013. The appellant was left free to accept the one time settlement proposal or to pay Rs. 8,14,822/- in instalments. The coercive steps pursuant to Exts.P1 and P4 notices should be put on hold till 31/12/2013. The learned Single Judge also made it clear that nothing stated in the judgment will disable the petitioner from moving other forums if there are serious disputes as regards the quantification of liability.

4. When the matter came up for consideration, we directed the learned counsel for the respondents to get instructions in the matter. Today, the counsel for the respondents submitted that the One Time Settlement scheme is extended till 30/6/2014 and it is open to the appellant to avail the benefit of the said scheme. The learned counsel also submitted that the statement of accounts and the amount payable under the One Time Settlement scheme will be served on the appellant within a period of two weeks from today. It is open to the appellant to avail the said benefit by making proper application. It is also open to the appellant to seek information regarding the One Time Settlement scheme by

approaching the respondents'' office. Proceedings initiated pursuant to Exts.P1 and P4 will be kept in abeyance till 30/6/2014.

The writ appeal is disposed of as above.

