(2016) 01 KAR CK 0344

In the Karnataka High Court

Case No : Writ Petition No. 60325/2011 (GM-RES)

Syndicate Bank APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Karnataka Agricultural Credit Operations and Miscellaneous Provisions Act, 1974 — Section 12

Citation : (2016) 01 KAR CK 0344

Hon'ble Judges : H. Billappa, J.

Bench : Single Bench

Advocate : Suresh S. Gundi, Advocate, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—1. In this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the order dated 04.10.2010 passed by the 2nd respondent in ARCS Case No. 138/2007-2008 vide Annexure-''M''.

2. By the impugned order at Annexure-''M'', the 2nd respondent has dismissed the petition filed by the petitioner under Section 12 of the Karnataka Agricultural Credit Operations and Miscellaneous Provisions Act, 1974, (for short ''the Act'') and has directed the petitioner to waive the entire agricultural loan of the third respondent as per the Agriculture Loan Waiver and Debt Relief Scheme, 2008.

3. Aggrieved by that, the petitioner has filed this writ petition.

4. Briefly stated the facts are; The petitioner is a baking company. It is stated, the 3rd respondent is the customer of the petitioner-Bank. The 3rd respondent applied for various loan facilities such as agricultural loan, vehicle loan, building and construction loan. The 3rd respondent had applied for loan of Rs. 5 lakhs on

05.06.2002 to the petitioner-Bank for construction of farm house. The 3rd respondent was sanctioned loan of Rs. 4 lakhs by the petitioner-Bank on 11.09.2002. It is stated, the Bank released the loan amount in installments. The total amount released by the petitioner-Bank was Rs. 3,60,000/-.

5. It is stated, the 3rd respondent failed to utilise the loan for the purpose for which it was sanctioned. Therefore, the petitioner-Bank did not release the remaining amount of Rs. 40,000/-. The 3rd respondent failed to repay the loan amount. Therefore, the petitioner-Bank filed an application in Form No. 1A before the 2nd respondent for issuance of recovery certificate for Rs. 5,60,420/- with interest at 12% p.a. The 2nd respondent issued recovery certificate in Form No. V.

6. It was challenged by the 3rd respondent in W.P. No. 61828/2009. This Court by its order dated 09.04.2010 allowed the writ petition and the matter was remanded to the 2nd respondent with a direction to pass appropriate orders in accordance with law. Thereafter, after giving opportunity to the parties, the 2nd respondent by order dated 04.10.2010 has dismissed the petition filed by the petitioner with a direction to waive the entire agricultural loan of the 3rd respondent in terms of the Agricultural Debt Waiver and Debt Relief Scheme, 2008 (for short ''the Scheme''). Aggrieved by that, the petitioner-Bank has filed this writ petition.

7. The 3rd respondent has filed statement of objections denying the petition averments and contending that on 05.06.2002, the 3rd respondent being persuaded by the petitioner-Bank to avail loan for agricultural land development applied for agricultural land development loan of Rs. 5 lakhs for which the petitioner-Bank obtained signatures of the 3rd respondent on various blank forms. Subsequently, the petitioner-Bank got executed the simple mortgage deed as per Annexure-''R-9''.

8. It is stated, on 19.09.2002, the petitioner-Bank directed the 3rd respondent to pay a sum of Rs. 75,000/- as margin money for land development loan to his Kisan Credit Card Account No. 82/2001. The 3rd respondent deposited a sum of Rs. 75,000/- in cash to the account No. 82/2001. The petitioner-Bank has willfully misrepresented the facts.

9. It is stated, on the representation of the petitioner-Bank that the third respondent could also avail the loan for construction of farm house and cattle shed, the 3rd respondent applied for the same. However, the petitioner-Bank put a condition that the 3rd respondent should invest his own funds for construction of plinth and then approach the Bank for availing the loan. The 3rd respondent apart from taking up agricultural development works has also taken up construction of farm house upto plinth level by investing more than Rs. 1,50,000/- and then approached the petitioner-Bank for release of farm house loan of Rs. 5 lakhs. In the meantime, the Manager of the petitioner-Bank who was instrumental in encouraging the 3rd respondent for taking up developmental

works stood transferred and the incumbent Manager kept on postponing sanction of farm house loan amount on one or the other pretext. Therefore, the 3rd respondent started suffering huge loss and set back to the house construction. Therefore, the 3rd respondent requested the authorities several times. Thereafter, the 3rd respondent submitted a complaint to the higher authorities for non-sanctioning of farm house loan. But, no action was taken. It is stated, the loan availed by the 3rd respondent was for agricultural development purposes and not for construction of farm house. The 2nd respondent after considering the evidence on record has rightly dismissed the petition filed by the petitioner-Bank holding that the loan availed by the 3rd respondent was for agricultural land development and not for the purpose of construction of farm house and cattle shed. Further, the 2nd respondent has rightly directed the petitioner to waive the entire agricultural loan of the 3rd respondent under the Scheme. Therefore, the 3rd respondent has prayed for dismissal of the writ petition.

10. The learned counsel for the petitioner-Bank contended that the impugned order passed by the 2nd respondent cannot be sustained in law. He also submitted that the 3rd respondent was not a small farmer. Annexure-''A'' and Annexure-''R-9'' i.e., mortgage deed clearly show that the 3rd respondent owned 5 acres and 16 guntas of land in Sy. No. 8/2 of Byalawadgi village. Therefore, the third respondent is not a small farmer. Further he submitted that the loan availed by the 3rd respondent is a long term loan and the amount exceeds Rs. 50,000/- and therefore, the 3rd respondent is not entitled for the benefit of loan waiver scheme. Further he submitted that the 3rd respondent has availed the loan for the purpose of construction of farm house and cattle shed and therefore, the scheme is not applicable for such loans. Therefore, the 3rd respondent cannot claim the benefit of loan waiver scheme. The 2nd respondent was not justified in dismissing the petition filed by the petitioner-Bank. Therefore, the impugned order cannot be sustained in law.

11. As against this, the learned counsel for the 3rd respondent submitted that the impugned order does not call for interference. He also submitted that the 2nd respondent on proper consideration of the material on record has rightly held that the loan availed by the 3rd respondent is for the purpose of agricultural land development and not for the purpose of construction of farm house and a cattle shed. Further he submitted that the 3rd respondent is a small farmer. No doubt, Sy. No. 8/2 of Byalawadgi village measures 5 acres 16 guntas. Out of that, 1 acre has been converted for non-agricultural purpose. The cultivable land is only 4 acres 16 guntas. Therefore, the 3rd respondent is a small farmer. Further he submitted that the loan availed by the 3rd respondent was for land development purpose and therefore Explanation 3 to para 3.7 of the Scheme is not applicable to the loan availed by the 3rd respondent. The 3rd respondent being a small farmer and having availed the loan for land development purpose is entitled for the benefit of the scheme. He also submitted that the petitioner has produced some documents for the first time before this Court. No explanation is

forthcoming as to why these documents were not produced before the 2nd respondent. The documents produced by the petitioner vide Annexure-''F'', Annexures-''L1'', ''L2'' and ''L3'' clearly show that the loan was a crop loan and the cultivable land in Sy. No. 8/2 is only 4 acres and 16 guntas and 1 acre has been converted. Therefore, the 2nd respondent was justified in holding that the loan availed by the 3rd respondent was for the purpose of agricultural land development and not for the purpose of construction of farm house and cattle shed and that being a small farmer, the 3rd respondent is entitled for the benefit of the Scheme. Inviting my attention to Annexure-''R9'' mortgage deed, he submitted that the loan availed by the 3rd respondent was for agricultural land development purpose. Therefore, the impugned order does not call for interference.

12. The learned Government Advocate supported the impugned order.

13. I have carefully considered the submissions made by the learned counsel for the parties.

14. The point that arises for my consideration is; Whether the impugned order calls for interference?

15. It is relevant to note, the petitioner contends that the 3rd respondent was sanctioned loan of Rs. 4 lakhs and a sum of Rs. 3,60,000/- was paid. The loan was not repaid by the 3rd respondent. Therefore, the petitioner approached the 2nd respondent for issuance of recovery certificate. The 2nd respondent after detailed enquiry has held that the loan availed by the 3rd respondent was for the purpose of agricultural land development and not for the purpose of construction of farm house and cattle shed. The learned counsel for the petitioner inviting my attention to Annexure-''A'', Annexure-''D'' series and Annexure-''R-9'' mortgage deed submitted that the 3rd respondent has availed loan for the purpose of construction of farm house and cattle shed and that the 3rd respondent is not a small farmer as he owns 5 acres and 16 guntas of land and a sum of Rs. 3,60,000/- has been paid to the 3rd respondent. Annexure-''A'' has not been produced by the petitioner before the 2nd respondent for the reason best known to it. However, Annexure-''D'' series show that a sum of Rs. 3,60,000/-has been received by the 3rd respondent. But, the learned counsel for the 3rd respondent submitted that Annexure-''D'' series are concocted documents. The amount of Rs. 75,000/- deposited by the 3rd respondent in cash has been shown in Annexure-''D'' as the amount received by the respondent No. 3 from the petitioner. Perusal of the pass book Annexure-''R-13'' shows that the 3rd respondent has deposited a sum of Rs. 75,000/- in cash on 19.09.2002. No cash is paid to the 3rd respondent by the Bank. Annexure-''R-13'' shows that the amount paid to the 3rd respondent by the petitioner is Rs. 2,85,000/-. Therefore, the 2nd respondent has held that what is paid to the 3rd respondent is only a sum of Rs. 2,85,000/- and the amount of Rs. 75,000/-deposited by the 3rd respondent has been wrongly shown as being paid by the Bank. Though the petitioner claims that the 3rd respondent has availed loan for the purpose of

construction of farm house and cattle shed, Annexure-''F'' the application filed by the petitioner in Form No. 1A shows that the loan was a crop loan. Therefore, the petitioner cannot contend that the 3rd respondent availed loan for the purpose of construction of farm house and cattle shed.

16. Further, it was contended by the learned counsel for the petitioner that the 3rd respondent is not a small farmer and therefore, he is not entitled for the benefit of the loan waiver scheme. I do not find any merit in this contention. No doubt, Annexure-''A'' produced by the petitioner shows that the 3rd respondent owned 5 acres 16 guntas of land in Sy. No. 8/2 of Byalawadgi village. So also, Annexure-''R-9'' mortgage deed shows that the petitioner owned 5 acres 16 guntas of land. A careful perusal of the material on record shows that the entire land is not cultivable. Annexures-''L-1'', ''L-2'' and ''L-3'' produced by the petitioner show that out of 5 acres 16 guntas of land in Sy. No. 8/2 of Byalawadgi village, 4 acres 16 guntas of land is cultivable. One acre in Sy. No. 8/2 has been converted for non-agricultural purpose. Therefore, the actual cultivable land in Sy. No. 8/2 is only 4 acres 16 guntas. In terms of the definition of the Scheme, a farmer cultivating agricultural land of more than 1 hectare and upto 2 hectares (i.e., 5 acres) is a small farmer. The 3rd respondent falls within the description of a small farmer. Annexure-''F'' produced by the petitioner and Annexure-''R-9'', the registered mortgage deed clearly show that the loan was availed by the 3rd respondent for agricultural land development purpose and not for the purpose of construction of farm house and cattle shed as claimed by the petitioner. Therefore, the 3rd respondent is entitled for the benefit of the Scheme being a small farmer. The 2nd respondent on proper consideration of the material on record has rightly held that the loan availed by the 3rd respondent was for the purpose of agricultural land development and not for the purpose of construction of farm house and cattle shed. Therefore, the impugned order does not call for interference.

Accordingly, the writ petition is dismissed. No costs in the circumstances of the case.

