

Joseph Antony Vs. State of Kerala

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Court : Kerala

Decided On : Dec-20-2014

Judge : Honourable Mr.Justice C.K.Abdul Rehim

Appellant : Joseph Antony

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM SATURDAY,THE20H DAY OF DECEMBER201429TH AGRAHAYANA, 1936 WP(C).No. 12318 of 2010 (L) PETITIONERS: ----- 1. JOSEPH ANTONY, RESIDING AT CHARANKATTU HOUSE, THEKKUMMURI, ARTHUNKAL P.O. CHERTHALA SOUTH, CHERTHALA TALUK, ALAPPUZHA DIST.

2. MARIAMMA @ JALAJA JOY, W/O.JOSEPH ANTONY RESIDING AT CHARANKATTU HOUSE THEKKUMMURI, ARTHUNKAL P.O.,CHERTHALA SOUTH CHERTHALA TALUK, ALAPPUZHA DIST.

3. ANTONY PRAVEEN, S/O.JOSEPH ANTONY, RESIDING AT CHARANKATTU HOUSE, THEKKUMMURI, ARTHUNKAL P.O., CHERTHALA SOUTH, CHERTHALA TALUK, ALAPPUZHA DIST. BY ADV. SRI.K.N.RAMACHANDRA PANICKER RESPONDENTS: ----- 1. THE PRSIDENT, KERALA STATE CO-OPERATIVE BANK, THIRUVANANTHAPURAM.

2. THE PRRESIDENT, DISTRICT CO-OPERATIVE BANK, ALAPPUZHA SOUTH OF IRON BRIDGE, ALAPPUZHA.

3. THE ASST.GENERAL MANAGER (DD) NATIONAL BANK OF AGRICULTURE AND RURAL DEVELOPMENT (NABARD) BRANCH ALAPPUZHA DIST VANNIAMPARAMPIL HOUSE, 19/620, GUJARATHI STREET ALAPPUZHA - 688012.

4. NODLE OFFICER APPOINTED UNDER THE AGRICULTURAL DEBT WAIVER AND DEBT RELIEF SCHEME 2008 FORM DISTRICT CO-OPERATIVE BANK, ALAPPUZHA OFFICE AT DISTRICT CO-OPERATIVE BANK BRANCH AT CHERTHALA, CHERTHALA P.O., ALAPPUZHA DISTRICT. W.P (c) No.12318/2010 -2- 5. THE PRESIDENT, THE ARTHUKAL VILLAGE SERVICE CO-OPERATIVE BANK LTD.NO.3772 ARTHUNKAL P.O., (VIA)CHERTHALA, ALAPPUZHA DISTRICT.

6. STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY TO THE GOVERNMENT DEPARTMENT OF CO-OPERATIVE , GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM. R1 BY ADV. SRI.NAGARAJ NARAYANAN, SC, K.S.CO-OP BANK R2 & R4 BY ADV. SRI.P.K.VIJAYAMOCHANAN, SC, ALP. DIST.CO-OP BANK. R3 BY ADVS. SRI.LEO GEORGE SRI.K.P.SUJESH KUMAR SRI.K.N.SASIDHARAN NAIR R5 BY ADVS. SRI.V.G.ARUN SRI.T.R.HARIKUMAR R6 BY GOVERNMENT PLEADER SRI. P.V.ELIAS. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 2012-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: AMG W.P (c) No.12318/2010 APPENDIX PETITIONER'S EXHIBITS EXT- P1- TRUE COPY OF THE LOAN APPLICATION FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT DATED NIL . EXT- P2- TRUE COPY OF THE STATEMENT OF VERIFICATION REPORT ON THE LOAN APPLICATION BY BOARD OF DIRECTORS DATED NIL FILED BEFORE THE 5TH RESPONDENT. EXT- P3- TRUE COPY OF THE SECURITY BOND FILED IN THE LOAN RECORDS EXECUTED ON 1003-1999 BY THE BANK AUTHORITIES AND SIGNED BY THE PETITIONER. EXT- P4- TRUE COPY OF THE JOINT MORTGAGE DEED EXECUTED BY THE PETITIONERS IN FAVOUR OF THE

PRESIDENT OF THE 5TH RESPONDENT BANK. DOCUMENT No.1006 DATED 13/03-1999 REGISTERED AT THE SUB REGISTRY OFFICE, CHERTHALA. EXT- P5- TRUE COPY OF THE LOAN APPLICATION FILED BY THE 2ND PETITIONER MARIAMMA CALLING JALAJA JOY DATED NIL BEFORE THE 5TH RESPONDENT BANK. EXT- P6- TRUE COPY OF THE STATEMENT OF VERIFICATION REPORT OF THE BOARD OF THE DIRECTORS ON THE LOAN APPLICATION DATED NIL FILED BEFORE THE 5TH RESPONDENT. EXT- P7- TRUE COPY OF THE SECURITY BOND SIGNED AND EXECUTED BY THE 2ND PETITIONER BEFORE THE PRESIDENT OF THE 5TH RESPONDENT BANK DATED 10/03-1999. EXT- P8- TRUE COPY OF THE LOAN APPLICATION FILED BY THE 3RD PETITIONER BEFORE THE PRESIDENT, 5TH RESPONDENT BANK. EXT- P9- TRUE COPY OF THE STATEMENT OF VERIFICATION OF THE LOAN APPLICATION FILED BY THE BOARD OF DIRECTORS DATED NIL AND FILED BEFORE THE BANK. EXT- P10- TRUE COPY OF THE DRAFT SECURITY BOND SIGNED BY THE 3RD PETITIONER IN THE NAME OF THE PRESIDENT, 5TH RESPONDENT BANK DATED 10/03-1999. EXT- P11- TRUE COPY OF THE AGRICULTURAL DEBT WAIVER AND DEBT RELIEF SCHEME 2008 DECLARED BY THE GOVERNMENT OF INDIA DURING THE YEAR 2008-2009 REPRODUCED AND CIRCULATED BY THE GENERAL MANAGER ALAPPUZHA DIST. CO-OPERATIVE BANK LTD. DATED NIL. W.P (c) No.12318/2010 -2- EXT- P12- TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE PRESIDENT DISTRICT CO-OP BANK, ALAPPUZHA DATED 28/09-2008. EXT- P13- TRUE COPY OF THE COMMUNICATION ISSUED BY THE SECRETARY OF THE 5TH RESPONDENT BANK TO THE PETITIONERS DATED 03/03-2010. EXT- P14- TRUE COPY OF THE LETTER No.144/08.09 DATED 24/10-2008 ISSUED BY THE ASSISTANT INFORMATION OFFICER OF THE 5TH RESPONDENT BANK TO THE 1ST PETITIONER. RESPONDENTS' EXHIBITS NIL True copy P.A. To Judge AMG C.K. ABDUL REHIM, J.

----- W.P.(c) No. 12318 OF 2010 L
----- DATED THIS THE 20th DAY OF
DECEMBER, 2014.

JUDGMENT

Dispute involved in this writ petition is regarding the eligibility of the petitioners for getting benefits under Ext.P11 scheme introduced by the Union Government, with respect to agricultural debt waiver and debt relief. The scheme was introduced in the year 2008. The petitioners are members of the 5th respondent Service Co-operative Bank. According to the petitioners, they availed agricultural loans to the tune of Rs.25,000/- each from the 5th respondent Bank during the year 1999. When they approached the 5th respondent seeking waiver of the amounts in default, initially they were informed that they are entitled for the waiver of interest under the terms of the scheme. But later it was informed that the petitioners are not eligible to the benefits under Ext.P11 scheme and that they are liable to repay the loan as per the Bank's Rules. The petitioners thereupon approached the 1st respondent with a request to direct the 4th respondent to examine the W.P.(c) No. 12318/2010 -2- case and to extent the benefit of Ext.P11 scheme with respect to the loans availed by them. Exhibit P12 is the representation submitted in this regard. But in Ext.P13 reply the 5th respondent Bank had informed the petitioners that the 4th respondent had found that the petitioners are not eligible for the benefits under the scheme, because the mortgage deeds executed by the petitioners while availing the loans revealed that the purpose for which the loans were availed is for "repayment of debt". According to the petitioners the reason for declining the benefits under the scheme mentioned in Ext.P13 is absolutely incorrect. It is specifically contended that the petitioners have applied only for 'agricultural loans' and the loans in question were sanctioned only for the said purpose. It is specifically contended that the petitioners will fall within the eligible category mentioned under Ext.P11, since they are small holders having availed loan within the period stipulated and the loan amounts remained in default within the limits stipulated under Ext.P11. Under such circumstances the petitioners seeks declaration that they are eligible for the W.P.(c) No. 12318/2010 -3- benefits of Ext.P11 scheme and also seeks direction to the respondents 1 & 2 to conduct a detailed enquiry in the matter with opportunity afforded to the petitioner and also to issue necessary consequential directions for allowing the benefit of Ext.P11 scheme.

2. In the counter affidavit filed on behalf of respondents 2 & 4 it is mentioned that based on Ext.P12 complaint the Nodal Officer and the Redressal Grievance Officer had verified the records pertaining to the loan transaction, which revealed that the contention of the petitioners that they availed loan for agricultural purpose is not correct. It is further mentioned that on inspection of the records they have found that there were various discrepancies in the documents of the 5th respondent Bank with respect to the disbursal of the loans. Findings of those authorities are to the effect that, "the recital in the Mortgaged Deed never infer confidence that the loans issued were agricultural loans. On the other hand, it establishes that the loans were 'personal loans' for domestic purposes and never agricultural loans". However it is stated W.P.(c) No. 12318/2010 -4- in the counter affidavit that the respondents feel that there is no need for any further scrutiny of the documents by any higher or responsible forum. Narrations contained in the counter affidavit is to the effect that the purpose shown in the loan application of the 1st petitioner is, 'To carry out Agricultural Operations'. With respect to Ext.P5, which is the application of the 2nd petitioner it is admitted that there is a correction and overwriting in the purpose shown and 'agriculture purpose' is seen corrected as 'repayment of debt'. With respect to the 3rd petitioner Ext.P8 application shows that the purpose shown is 'digging of pond and assembling of clay'. It is further noticed that the valuation committee which inspected the mortgaged properties had submitted report, in which the purpose of loan is shown as, 'household requirement', 'Clearance of debt' and 'Domestic requirement' etc. So also the purpose shown in the 'security bond' executed by the petitioners as well as the recitals in the mortgaged deeds are differing from one another. The above facts are relied on by the respondents 2 & 3 to arrive at a conclusion that the loans were not availed for W.P.(c) No. 12318/2010 -5- agricultural purpose and to hold that the petitioners are not entitled to the benefits of Ext.P11 scheme. Contention of the petitioners is that such conclusions are arrived without making any proper enquiry. It is contended that the petitioners are small farmers who had availed loans for agricultural purposes. The 5th respondent society had sanctioned the loans specifically for such purposes and therefore rejection of the benefits allowable under Ext.P11 is highly illegal, unreasonable and unjustifiable.

3. This court takes note of the fact that Ext.P11 scheme provides a machinery for the grievance redressal. It is provided that every lending institution has to appoint a 'Grievance Redressal Officer' who should have the authority to receive representations from aggrieved farmers and to pass appropriate orders thereon. It is stated therein that order of the Redressal Officer shall be final. In the case at hand, the stand taken by respondents 2 & 3 is to the effect that the Nodal officer along with Redressal Grievance Officer had made verification. The Basic findings are to the effect that the purpose of loans shown in the form of W.P.(c) No. 12318/2010 -6- application, in the report of the security evaluation committee, in the security bond executed by the petitioners and in the mortgaged deed, varies each other in different cases. But it is pertinent to note that, normally a loan can be sanctioned only for the purpose for which it is applied for. The best document which could have been verified for ascertaining the purpose for which the loan was sanctioned, is the records available in the 5th respondent Bank pertaining to sanctioning of the loans. There is nothing to indicate that the Grievance Redressal Officer had called and verified any of the records of the 5th respondent Bank pertaining to processing and sanctioning of the loans concerned. There will be also records available pertaining to the decision taken by the Board of the 5th respondent with respect to sanctioning of the loan. Without a scrutiny of such records it cannot be said that the loans were not sanctioned for agricultural purposes, especially when the application form indicates that the petitioners have applied for agricultural loans. W.P.(c) No. 12318/2010 -7- 4. Therefore this court is of the opinion that the matter requires reconsideration by the Grievance Redressal Officer attached to the 2nd respondent. Hence this writ petition is disposed of by directing the Grievance Redressal Officer under Ext.P11 Scheme attached to the District Co- operative Bank, Alappuzha to re-consider the matter and to take appropriate decisions with respect to eligibility of the petitioners for getting the benefits of Ext.P11 scheme. An enquiry in this regard shall be conducted by scrutinizing relevant records of the 5th respondent Bank, after affording opportunity to the petitioners on issuing notice to them. A decision in this regard shall be taken after affording opportunity of personal hearing also. The decision shall be taken by the Grievance Redressal Officer at the earliest possible, at any rate within a period of 2 months from the date of receipt of a copy of this judgment.

Sd/- C.K. ABDUL REHIM JUDGE AMG True copy P.A. to Judge

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