

M. Suresh Vs. the State Bank of India Rep. by Its Branch Manager

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Court : Chennai

Decided On : Mar-30-2010

Judge : N. Paul Vasanthakumar, J.

Appeal No. : W.P. No. 22121 of 2009 and M.P. Nos. 1 and 2 of 2009

Appellant : M. Suresh

Respondent : The State Bank of India Rep. by Its Branch Manager

Advocate for Def. : K.S. Sundar, Adv.

Advocate for Pet/Ap. : Party-in-Person

Judgement :

ORDER

N. Paul Vasanthakumar, J.

1. The prayer in the writ petition is to issue a writ of mandamus directing the respondents to return the Tractor bearing registration No. TN-23-AV-9516 and the Trailer bearing registration No. TN-23-AV-9625 to the petitioner under Loan A/c. No. 30129202318 in view of the waiver of agricultural loans by the Central Government.

2. The case of the petitioner is that the petitioner purchased Tractor and Trailer after raising loan from the respondent Nationalised Bank. The loan amount

sanctioned was Rs. 5 lakhs bearing loan A/c. No. 30129202318. An agreement was entered into with the respondent, however copy of the same was not furnished to him. According to the terms of the agreement, petitioner has to pay Rs. 30,000/- once in six months for a period of nine years. The petitioner gave his mother's property situated in Pudupattu Village, Arakkonam Taluk, Vellore District, towards collateral security. Petitioner purchased a new Tractor bearing registration No. TN-23-AV-9516 along with Trailer bearing registration No. TN-23-AV-9625. As the Tractor and Trailer were purchased on hire purchase basis, the respondent Bank name is found in the RC book. Petitioner claims that he was paying the installments without any default after the amount was sanctioned on 19.2.2007.

3. According to the petitioner, the Central Government in its budget for the year 2008-2009 announced waiver of all agricultural loans obtained prior to 31.3.2007 by the farmers owning lands less than five acres and the petitioner being the owner of only 4.32 acres, he is entitled to get full waiver of the loan amount. Therefore the petitioner did not pay the subsequent loan amount as it got waived automatically as per the announcement made by the Central Government. However, the respondent seized the petitioner's Tractor and Trailer on 7.10.2008 for non-payment of installments due and the petitioner submitted a representation on 20.2.2009 and requested the respondent to return the same due to the waiver of entire loan amount. The respondent gave a reply on 21.4.2009 stating that the amount payable to the tune of Rs. 42,137/- was waived and if there is any doubt, the petitioner can meet the respondent in person and get the same clarified. Believing the communication sent by the respondent to the petitioner on 21.4.2009 as full waiver of the loan amount, petitioner has filed the writ petition stating that the Tractor and Trailer have to be returned.

4. The respondent has filed counter affidavit stating that Rs. 5.00 lakhs loan was sanctioned to the petitioner on 19.2.2007 repayable in 18 installments. The petitioner should repay the installments of the principal amount of Rs. 27,800/- and agreed interest to the tune of Rs. 18,603/-. Petitioner defaulted the first installment and the total amount payable is not Rs. 5,40,000/- as claimed in the affidavit. Petitioner having availed the loan amount before 31.3.2007 and having offered security of five acres of land, he is treated as a small farmer and by applying

Clause 4(1)(b), the installments that are over due was waived. The second installment fell due in February, 2008. Hence on 31.12.2007 the first installment and the interest totalling a sum of Rs. 46,403/- was waived and the remaining amount is repayable by the petitioner even as per the claim of the petitioner and having defaulted to pay a sum of Rs. 1,98,564/-, the Tractor and Trailer were seized and if the petitioner is willing to pay the amount of Rs. 1,52,161/- (Rs. 1,98,564/- minus Rs. 46,403/-), respondent is willing to release the Tractor and Trailer. The total exemption as claimed by the petitioner is unsustainable and the respondent prayed for dismissal of the writ petition.

5. Heard the petitioner, who appeared as party-in-person and the learned Counsel for the respondent.

6. The point for consideration is whether the petitioner is entitled to get waiver of the entire loan amount as claimed by him, or the loan payable with interest up to 31.12.2007 alone?

7. The Scheme of Agricultural Debt Waiver and Debt Relief, 2008 for farmers was announced by the Union Finance Minister in the Budget speech 2008-2009. Purchase of Tractor and Trailer is to increase the agricultural output, which is to be treated as investment loan under Clause 3(3) of the Scheme. 'Small Farmer' is explained in Clause 3(6) as the farmer cultivating agricultural land upto 2 hectares (5 acres) and the petitioner is a Small Farmer. Eligible amount for debt waiver or debt relief is stated in Clause 4(1), which reads thus,

4.1 The amount eligible for debt waiver or debt relief, as the case may be (hereinafter referred to as the 'eligible amount') shall comprise of:

(a) in the case of a short-term production loan, the amount of such loan (together with applicable interest):

(i) disbursed up to March 31, 2007 and overdue as on December, 31, 2007 and remaining unpaid until February 29, 2008;

(ii) restructured and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government, whether overdue or not; and

(iii) restructured and rescheduled in the normal course upto March 31, 2007 as per applicable RBI guidelines on account of natural calamities, whether overdue or not.

(b) In the case of an investment loan,

the installments of such loan that are over due (together with applicable interest on such installments) if the loan was:

(i) disbursed upto March 31, 2007 and overdue as on December, 31, 2007 and remaining unpaid until February, 29, 2008;

(ii) restructured and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government; and

(iii) restructured and rescheduled in the normal course upto March 31, 2007 as per applicable RBI guidelines on account of natural calamities.

Explanation: In the case of an investment loan disbursed upto March 31, 2007 and classified as non-performing asset or suit filed account, only the installments that were overdue as on December 31, 2007 shall be the eligible amount.

As per Clause 5(1), in case of small or marginal farmer, the entire eligible amount shall be waived and insofar as other farmers are concerned, a rebate of 25% of the eligible amount subject to the condition that the farmer pays the balance 75% of the eligible amount. All the branches of the bank were directed to follow the said guidelines.

8. From the perusal of the above scheme it is evident that the petitioner is eligible to get waiver of overdue as on 31.12.2007 which remain unpaid loan amount until 29.2.2008, provided the loan is disbursed before 31.3.2007. In this case, the petitioner's loan was disbursed on 19.2.2007 and it has to be treated as the loan raised for agricultural purpose viz., for the purchase of Tractor and Trailer. Petitioner is coming within the meaning of 'Small Farmer' as he is having less than five acres of agricultural land. The debt waiver having been stated as entire eligible amount insofar as small and marginal farmers are concerned, the eligible

amount payable upto December, 2007 can be claimed as waived.

9. In the counter affidavit filed by the respondent it is stated that the first installment of the petitioner became due on 19.8.2007 with interest and the second installment fell due in February, 2008. As per the scheme, particularly Clause 4(1)(a)(i) the amount overdue as on 31.12.2007 and remaining unpaid till the end of February, 2008, are waived. Hence the respondent is bound to give waiver of installment and interest up to the installment fell due till the end of December, 2007. The reply given by the respondent dated 21.4.2009 states that a sum of Rs. 42,137/- which the petitioner fail to pay has been waived. How the said amount is arrived at, is not stated.

10. In view of the above, the respondent is directed to calculate the amount payable by the petitioner up to 31.12.2007 and grant waiver of installments and interest payable up to the said date and demand the balance installments and interest payable thereafter within a period of one week from the date of receipt of copy of this order. If the petitioner is willing to pay the said amount of installments due as on date with interest, the respondent shall release the Tractor bearing registration No. TN-23-AV-9516 and the Trailer bearing registration No. TN-23-AV-9625 to the petitioner.

The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petitions are closed.

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