

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

W.P.No.28483 of 2021

ORDER:

This writ petition is filed by the petitioner who is a borrower of the respondent-Bank questioning the failure of the respondent to redeliver possession of two godown despite the loan being cleared.

It is submitted by Smt. Dyumani, learned counsel for the petitioner that the petitioner has paid all the dues to the respondent-Bank and the two loan accounts were closed. She draws the attention of this Court to the two certificates dated 11.08.2021 in which it is certified that the accounts pertaining to the Kakamanu Rural godown was closed on 31.07.2021 and the account pertaining to Rama Rural godown was closed on 28.03.2016 respectively. Learned counsel submits that these certificates are issued by the respondent-Bank itself informing that both the dues are settled. She points out that in addition, there was a writ petition (W.P.No.2229 of 2017) pertaining to NABARD subsidy which was not adjusted by the Bank. Ultimately, after the writ petition is filed, the subsidy was adjusted and therefore, the said writ petition is also closed/dismissed. Learned counsel submits that thus as far as Bank is concerned, their claims are settled and that despite the same, the godowns have not been handed over. Learned counsel also submits

that the petitioner has filed a suit O.S.No.439 of 2016 which is pending questioning the action of the Bank and claiming a sum of Rs.2.50 crores as damages. This suit is pending on the file of the Principal District Judge, Guntur. Learned counsel submits that this is an independent cause of action. She also points out that One Time Settlement scheme was introduced and an offer was given to the petitioner on 09.10.2017 to settle the cases pending. Pursuant to this One Time Settlement offer, the petitioner settled the dues by agreeing to the terms and conditions which are borne out by letter dated 30.10.2017. Learned counsel points out that this One time settlement relates to the Kakamanu Rural Godown. The Rama Rural Godown was settled earlier in March, 2016 itself. Therefore, learned counsel submits that the conditions of the One Time Settlement do not relate to the pending suit for damages etc., and the insistence of the respondent-Bank that the said suit should also be withdrawn is totally contrary to the terms of the settlement and contrary to law. Therefore, she prays for an order.

Respondents submissions:

Sri Ramanna Dora, learned standing counsel for the Bank submits that there are no disputes essentially about the facts that the petitioner was a defaulter and her accounts were classified as NPA etc. It is asserted that the Bank lawfully took possession of the godowns, but that they took

good care of the same. It is admitted in the course of his arguments that the Nabard subsidy was also adjusted. However, it is stated that O.S.No.439 of 2016 for damages is still pending and that unless the same is withdrawn, in terms of the compromise between the parties, the godowns cannot be returned under the One Time Settlement scheme. Therefore, the sum and substance of the contention of the learned counsel for the respondents is that as per the terms of the One Time Settlement, the petitioner is bound to withdraw the pending suit O.S.No.439 of 2016 before she is entitled to the relief.

COURT:

As rightly mentioned by the learned standing counsel for the respondent-Bank and the petitioner, there is no dispute about the fact that the godowns and title deeds are in the respondents custody. The petitioner's first account pertaining to Rama Rural godowns was closed on 28.03.2016. This is evidenced by the Banks certificate dated 01.09.2016. The suit for damages O.S.No.439 of 2016 has been filed on 28.11.2016. It is still pending. This is visible from the Court stamp affixed on the plaint. Thereafter, on 09.10.2017, an offer was given by the respondent-Bank for settlement of the Kakamanu Rural godown. Conclusions/consensus were arrived at and a further letter dated 30.10.2017 was issued to the petitioner by the respondent-Bank. The settlement was

for a sum of Rs.1,22,89,895/-. The terms and conditions of the One Time Settlement were accepted by the petitioner by signing on the second page of this letter. Therefore, this account was also closed and the certificate dated 11.08.2021 was issued. This certificate mentions that the account was closed on 31.07.2021. The entire defence of the respondent relies upon the failure of the petitioner to withdraw the suit for damages. According to the respondents, this case should be withdrawn for the godowns/title deeds to be returned.

A reading of the offer letter dated 09.10.2017 or the acceptance dated 30.10.2017 shows that there is no express reference to this particular suit. The One Time Settlement offer letter is given long after the filing of the suit. The Bank should have mentioned the same with clarity if it was meant to be an integral part of the compromise. The offer letter dated 09.10.2017 contains the following clause:

“Since your case is pending before Court/Lok Adalat/DRT any settlement will be subject to consent decree/necessary orders from the Court/Lok Adalat/DRT, and this letter is without prejudice to the rights and contentions of the Bank in the said proceedings.”

The acceptance is borne out by the letter dated 30.10.2017. The term relating to Court case is as follows:

vii. Consent terms with default clause will be filed before Presiding Officer of DRT Court for obtaining Consent Decree. (emphasis supplied).

A plain reading of this letter of offer and the subsequent letter show that there is no reference to suit for damages in either to these documents. The offer letter says that the settlement will be subject to the consent decree, necessary orders from the Court, lok-adalat and Debt Recovery Tribunal. The 2nd letter states that consent terms with a default clause will be filed before the “Presiding Officer of the Debt Recovery Tribunal”. Therefore, it is clear neither of these two letters refer to the pending suit O.S.No.439 of 2016. This Court therefore holds that the Bank cannot insist on the withdrawal of the suit O.S.No.439 of 2016 as a pre-condition for delivering possession of the godowns. If this was a necessary pre-condition, it must have been mentioned with clarity and precision.

It is also not clear by what authority/which provision of law the possession of the godowns is still being retained. The counter is absolutely silent. On this aspect there is no reference to a rule/statute or a clause of any agreement. It is also clear that Bankers lein is neither pleaded nor proved to enable the Bank to retain the title deeds. Even more striking is the fact that “possession” is retained after the loans are cleared.

This Court does not find any reason to permit the respondents to still retain possession of the two godowns or the title deeds. The letter dated 09.09.2021 by which the petitioner's claim was negated is held to be totally contrary to law. The respondents do not have the right to retain possession of the godowns/title deeds. They are bound to handover the same to the petitioner. As far as the suit O.S.No.439 of 2016 is concerned, this Court is of the opinion that this order will not prejudice the respondents from contesting the suit, and all the pleas that are available to them can be raised/continued and argued in the said suit.

With these findings, the writ petition is allowed. There is an issue about the state of the godowns/status of material inside etc. In view of this Court's findings; the writ petitioner is directed to move an application before the trial Court in O.S.No.439 of 2016 for appointment of an Advocate Commissioner to note down the current status etc., of the godowns and all the materials inside etc. The trial Court shall decide the application within two (2) weeks after hearing the respondent. Immediately after the execution of the warrant is over; the respondent-Bank shall hand over the two godowns and all the title deeds to the petitioner. This Court could have appointed a Commissioner, but as it is felt that as this evidence may be needed for deciding the suit OS.No.439 of 2016, this order is passed. No order as to costs.

As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

Date : 31.03.2022.
KLP