

JAMMU RURAL BANK

v.

MOHD. DIN AND ORS.

(Civil Appeal Nos. 4817-4851 of 2002)

AUGUST 29, 2008

[P. SATHASIVAM AND AFTAB ALAM, JJ.]

Bank/Banking – Loan waiver scheme – Indebtedness and inability of Respondent-borrowers in the State of Jammu and Kashmir to repay loan amount due to continuous militant activities in the State – Amounts borrowed less than Rs. 10,000/- – Debt Relief Scheme floated by Government for borrowers in the State – Scheme provided for waiver of bank loans upto Rs.50,000/- – Liberal interpretation of the scheme by Courts below and consequent dismissal of suits filed by Appellant-banks against Respondent-borrowers – Justification of – Held: Justified, considering the peculiar facts and circumstances of the case and in light of the various clauses in the Scheme itself and also in view of the fact that sub-clause (a) of Section 3 of the scheme provided for reimbursement of waived loan to the concerned banks.

Respondents belong to the State of Jammu & Kashmir. They obtained loans upto Rs.10,000/- from Appellant-Banks for rearing of sheep and buffaloes and for establishing dairy units. The loans remained unpaid on which, the Appellant-banks filed suits against the Respondents. During pendency of the said suits, the Government framed a Debt Relief Scheme for borrowers in the State of Jammu & Kashmir to give them relief considering the continued militancy and other difficulties in the State during the relevant time. The scheme provided for waiver of bank loans taken by borrowers in the State upto Rs.50,000/- for purpose of their business activities.

Taking *suo motu* notice of the said Scheme, the

A Courts below held that the loans obtained by Respondents could be presumed to be for trade purpose and after applying the said scheme, dismissed the suits filed by Respondents.

B The questions which arose for consideration in the present appeals were as to i) whether the loan obtained by Respondents for purchasing sheep and buffalos and for establishing dairy units was covered by the said Scheme and ii) whether, in absence of a specific plea by the Respondents, the High Court was justified in granting relief in terms of the said Scheme.

Dismissing the appeal, the Court

HELD:1.1. The Debt Relief Scheme in question applies to borrowers in the State of Jammu & Kashmir who borrowed loan amount for the purpose of their business activities. Business activities have not been specifically defined in the scheme. Sub-clause (i) of clause 2(d) of the Scheme refers certain examples viz., tourism, transport, small scale industry, trade sector, hotel, house-boat business, retail trade, etc.. Though purchase of buffalos and sheep relates to agriculture and allied activities, it cannot be denied that from the buffalos, the borrower can establish a dairy unit and earn from the said business. In view of clause 2(d)(i), the word "etc." in the definition of "eligible loans" connotes that besides the activities cited as example for business activity there are other business activities which could be included under the Scheme. The said liberal interpretation cannot be ruled out particularly, when the Debt Relief Scheme was introduced mainly as a relief to the borrowers in the militant dominated State during the relevant time. Following the very reason for introduction of the said Scheme i.e. to offer financial help to the poor and indebted borrowers of militancy hit Jammu & Kashmir, the Courts below rightly concluded that the agricultural and allied

business activities viz., the types of trade/business which are substantially or partially depending on agriculture and/or agricultural produce as a business activity under the said Scheme. Further, the Reserve Bank of India Guidelines cannot be strictly followed as it has not been mentioned to be followed in the Scheme and, therefore, the term 'business activity' cannot be interpreted under the strict rule of interpretation. [Paras 9, 10, 13] [1045,C-D; 1045,E-G; 1047,D-E]

1.2. Besides, sub-clause (a) of Section 3 of the Scheme makes it clear that the amount waived off will be reimbursed to the concerned Bank/Financial Institution by the Department of Jammu & Kashmir Affairs, Government of India on recommendation of the Committee to be set up at the State Level. Even after the orders passed by the sub-Court and thereafter by the District Court, the Banks could have availed the benefit of reimbursement as provided under clause 3(a) of the Scheme. However, the appellant-Banks instead of availing the same, agitated the matter up to the level of this Court by spending more money for recovery of petty amounts from the small borrowers. The appellant-Banks are free to approach the Department of Jammu & Kashmir Affairs, Government of India who brought the Debt Relief Scheme, under clause 3(a) for reimbursement, if the same is permissible, at this juncture for which no opinion is expressed by this Court. [Para 14] [1047,H; 1048,A-C]

2. As regards the contention that in absence of a specific plea in the form of written statement or counter affidavit, the Court should not have given relief applying the said scheme, it is true that all the respondents were served by publication in the daily newspapers and in most of the cases, the amount borrowed was less than Rs.10,000/-, which may be one of the reason, the respondents failed to contest the suit. In those circumstances when the Government of India itself with the assistance of the State of Jammu & Kashmir brought

A a Scheme called "Debt Relief Scheme" and the same was available on the date when all the suits were pending, considering the special circumstances, the course adopted by the Courts below cannot be faulted with. [Para 11] [1046,A-D]

B 3. Considering all the peculiar aspects of the present case, particularly, indebtedness and inability to repay the loan amount by the borrowers due to continuous militant activities in the State of Jammu & Kashmir particularly, at the relevant time, the amounts borrowed which were less than Rs. 10,000/- in most of the cases, liberal interpretation of the Courts below in the light of the various clauses in the Scheme itself and also of the fact that sub-clause (a) of Section 3 of the scheme provides reimbursement of waived loan amounts, this Court is not inclined to interfere with the orders of the Courts below. [Para 15] [1048,D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4817-4851 of 2002

E From the final Judgment and Order dated 3.11.2000 of the High Court of J & K of Jammu in CSA Nos. 30, 44, 56, 50, 46, 72, 74, 47, 55, 51, 71, 66, 45, 78, 61, 73, 49, 63, 62, 76, 53, 69, 64, 68, 57, 41, 67, 65, 43, 42, 58, 54, 52, 48 & 40 of 1999

WITH

F C.A. Nos. 4852-4854 of 2002 & 5315 of 2008

Raju Ramachandran, G.M. Kawoosa and N. Ganpathy for the Appellant.

G S. Mehdi Imam and Anis Suhrawardy for the Respondents.

The Judgment of the Court was delivered by

H P. SATHASIVAM, J. 1. Civil Appeal Nos. 4817-4851 of 2002, by special leave, are directed against the final judgment and order dated 3.11.2000 passed by the High Court of Jammu

and Kashmir at Jammu in CSA Nos. 30, 44, 56, 50, 46, 72, 74, 47, 55, 51, 71, 66, 45, 78, 61, 73, 49, 63, 62, 76, 53, 69, 64, 68, 57, 41, 67, 65, 43, 42, 58, 54, 52, 48 and 40 of 1999 and Civil Appeal Nos. 4852-4854 of 2002 are directed against CSA Nos. 34, 35 and 77 of 1999.

2. The facts in Civil Appeal Nos. 4817-4851 of 2002 and Civil Appeal Nos. 4852-4854 of 2002 are as follows:

The respondents, in these appeals, borrowed loans ranging from Rs.3000/- to 10,000/- in most of the cases and in some cases it ranges from Rs.10,000/- to Rs.20,000/- from the Jammu Rural Bank and Jammu & Kashmir Bank Ltd. for different purposes. The loans remained unpaid and as a result, Banks filed suits against the respondents herein before sub-Judge, Rajouri. On 26.5.1997, Debt Relief Scheme for the borrowers in the State of Jammu and Kashmir was introduced by the Government of India, Ministry of Finance, vide No. F.11(08)/96-CP for waiver of eligible loans taken from banks, financial institutions etc. by the borrowers up to and inclusive of Rs.50,000/- as on 30.6.1996 for their business activity, for example, tourism, transport, small scale industry, trade sector, hotel, houseboat business, retail trade etc. The said scheme provides for reimbursement of the amount waived off by the banks, financial institutions etc. disbursed till 30th of June, 1996, by the Department of Jammu and Kashmir Affairs, Government of India. On 29.5.1997, letter No.FD-VII-CS/ Package/96 (Ann.P-2 in S.L.P.4852-4854 of 2002) was sent by the Director, Public Sector Undertakings, Finance Department, Government of Jammu & Kashmir to the Chairman, Jammu & Kashmir Bank for implementation of the said Relief Scheme. On 24.3.1999, on the basis of the Debt Relief Scheme introduced by the Government of India and followed by the State of Jammu & Kashmir, sub-Judge, Rajouri, while taking *suo motu* notice of the aforementioned relief scheme held that the loans advanced to the respondents was for the purpose of establishing the dairy units as well as rearing of sheep and buffalos and the same could be presumed to be a trade and by applying the

A said relief scheme, dismissed all the suits. Aggrieved by the said judgment, the Banks filed the first appeals before the District Judge, Rajouri and the same were also dismissed. Against the said judgment, the Banks filed second appeal before the High Court of Jammu and Kashmir at Jammu.

B 3. By a common judgment dated 3.11.2000, the High Court after finding that the Debt Relief Scheme announced by the Government of India was applicable to the loans borrowed by the respondents, dismissed all the second appeals filed by the Banks. Questioning the said order, the Banks have filed Civil Appeal Nos. 4817-4851 of 2002 and Civil Appeal Nos. 4852-4854 of 2002.

4. Leave granted in S.L.P.(C) No. 4901 of 2006.

D 5. In this appeal, when the Jammu & Kashmir Bank filed execution petition before the District Judge against a borrower, the District Judge, taking note of the Debt Relief Scheme applied the said Scheme and dismissed the execution petition by order dated 4.4.2002. Challenging the said order, the Jammu & Kashmir Bank Ltd. filed Civil Revision Petition No. 77 of 2002 before the High Court and the same was dismissed on 20.5.2003. Being aggrieved by the said judgment, the appellant-Bank filed Review Petition (C) No. 8 of 2005 before the High Court contending that agricultural matters are not included within the Debt Relief Scheme as communicated by the Reserve Bank of India. The High Court dismissed the same by an order dated 16.9.2005. Against the abovementioned orders in civil revision petition and the review petition respectively, the appellant-Bank has filed this appeal.

G 6. Since one and only issue in all these cases relates to applicability of Debt Relief Scheme of the Government of India, we dispose of the same by the following common order.

7. Heard Mr. Raju Ramachandran, learned senior counsel appearing for the appellant-Banks.

8. Prior to 1996, the respondents borrowed loans from the appellant-Banks. The said loans were advanced to them to purchase sheep and buffalos, establish dairy units or for hob cultivation. Except few, most of the loans advanced was below Rs.10,000/-. Since the loanees did not repay the loan amount, the Banks filed regular suits in sub-Court, Rajouri. During the pendency of these suits, considering the continued militancy and other difficulties, the Government of India framed a Scheme giving relief to the borrowers from the Banks, Financial Institutions etc. In all these cases, we have to decide,

- (i) Whether the loans obtained by the respondents for purchasing of sheep and buffalos, establishing dairy units etc. were covered by the Scheme; and
- (ii) In the absence of specific plea by the respondents-loanees whether the Court is justified in granting relief in terms of the Scheme.

In order to find out the answer for the above points, it is useful to refer the communication of the Government of India, Ministry of Finance, Department of Economic Affairs addressed to all the Banks of the Jammu & Kashmir Region. The said communication (Annexure P-1) reads as under:

**"No. F.11(08)/96-CP
Government of India
Ministry of Finance
Department of Economic Affairs
(Banking Division)**

Jeevan Deep Building, Sansad Marg,
New Delhi, the 26th May, 1997

The Chairman,
IDBI/ICICI/IFCI

The Chairman/Managing Director,
(All Scheduled Commercial Banks)

A The Jammu & Kashmir Bank Ltd.
 Srinagar

 Subject : - Debt Relief Scheme for the Borrowers
 In the State of Jammu & Kashmir

B Dear Sir,

C I am directed to say that it has been decided to extend relief by way of write off of eligible loans taken from banks/financial institutions up to and inclusive of Rs.50,000/- as principal, together with outstanding interest, in the case of borrowers in the State of Jammu & Kashmir only who suffered on account of militancy in the State. Accordingly, a Scheme known as "Debt Relief Scheme for the Borrowers in the State of Jammu & Kashmir" has been prepared and a copy thereof is enclosed for your information and necessary action. The Scheme will come into force with immediate effect.

D 2. The contents of the Scheme are self explanatory.

E In case there are any points that require clarification, suitable references may be made to this Division immediately. It may please be noted that no application from the eligible borrowers is necessary for providing relief under the Scheme. You are advised to implement the Scheme immediately by issuing suitable administrative instructions to your Branches/Offices.

F 3. It may be clarified here that under this Scheme only commercial loans/credit limits up to and inclusive of Rs.50,000/- as principal granted by Banks/Financial Institutions to the borrowers in the State of Jammu & Kashmir for their business activity viz., tourism, transport, small scale industry, trade sector, hotel, house boat, business, retail trade, etc., are eligible for relief. However, loans/credit limits granted against banks' own deposits or any other deposit, National Savings Certificates, Government Securities, Shares and Debentures, Mutual Funds, LIC policies, etc. and/or loans for purchase of any consumer durables etc. will not be eligible for any relief under the Scheme.

H 4. Under the Scheme, the borrower is required to be

advised in writing by the bank/financial institution concerned about the extent of relief provided in each account. A proforma in which the borrower may be advised is enclosed with the Scheme for your information and necessary action.

5. In terms of paragraph 5 of the Scheme, banks/financial institutions are required to submit a detailed claim statement sector-wise/borrower-wise as per proforma 'A' enclosed with the Scheme. The claim statement should be signed by an officer not below the rank of General Manager in case of Jammu & Kashmir State Financial Corporation/Jammu * Kashmir Bank Ltd. and Chief State Level Officer i.e. Regional/Zonal/Divisional Manager in respect of other banks/financial institutions. The claims on the prescribed proforma may be lodged by banks/financial institutions to the Director(Finance), State Department of Finance, Government of Jammu & Kashmir, Civil Secretariat, Srinagar. The last date for submissions of the claim shall be 30th September, 1997.
6. Necessary steps for speedy implementation of the Scheme may please be initiated at your and the relief under the Scheme be provided expeditiously.

Yours faithfully,

Sd/-

(G.R. Summan)

Deputy Secretary to the Government of India"

The appellant-Banks have also placed the Scheme called "Debt Relief Scheme for the borrowers in the State of Jammu & Kashmir". The perusal of the communication of the Government of India, Ministry of Finance as well as the Scheme shows that the main purpose of the Scheme was to give relief to the militancy hit borrowers of the State of Jammu & Kashmir. As per the Scheme, loans which have been sanctioned for business activities, namely, tourism, transport, small scale industry, trade sector, hotel, house boat business, retail trade etc. and which were existing in the books of accounts as on

A 30.6.1996 have been waived off with immediate effect. For applicability of the said Scheme, three conditions have to be fulfilled:

(i) The loan should be existing as on 30.6.1996 in the books of accounts.

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(ii) It should not exceed Rs.50,000/-.

(iii) The loan should have been advanced for any of the purposes referred above.

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If these three conditions are fulfilled, the loan is deemed to have been waived off. Though the respondent-defendants did not contest the suit by filing written statements, it is not in dispute that those loans were kept pending and shown in the books of accounts of the Banks as on 30.6.1996. It is also not in dispute that the amount borrowed has exceeded Rs.50,000/- . In fact, most of the loan amounts were below Rs.10,000/-. However, the strong objection of the appellant-Banks before the Courts below as well as in this Court is regarding the purpose of the loan i.e. the Scheme was intended to give relief to the traders for business activities and herein the respondents borrowed loans for purchase of sheep and buffalos, establishing dairy units etc. which are alike to agriculture and are not eligible to avail of the Debt Relief Scheme. Clause 2(d) of the Debt Relief Scheme speaks about the "Eligible Loans". The following sub-clauses of clauses 2(d) are relevant:

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"2(d)(i) Fresh loans/credit limits upto and inclusive of Rs.50,000/- as principal granted by banks/financial institutions and disbursed upto and outstanding as on the effective date i.e. 30th June, 1996 to the borrowers in the State of Jammu & Kashmir for the purpose of their business activity for example tourism, transport, small scale industry, trade sector, hotel, house-boat business, retail trade, etc.

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(ii) Short term loans/credit limits which were converted into term loans upto and inclusive of Rs.50,000/- granted to the borrowers in the State of Jammu & Kashmir as the

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short term loans, credit limits became irregular as a result of loss of stocks/assets due to militancy in the State. A

- (iii) Eligible loans mentioned at i) and ii) above should be outstanding in books of accounts of banks/financial institutions as on the effective date i.e. 30th June, 1996. In other words, the accounts which already stand closed on or before 30th June, 1996 would not qualify for any relief under the Scheme." B

9. It is true that the Scheme applies to the borrowers in the State of Jammu & Kashmir who borrowed loan amount for the purpose of their business activities. As rightly observed by the Courts below, business activities have not been specifically defined. On the other hand, sub-clause(i) of clause 2(d) refers certain examples viz., tourism, transport, small scale industry, trade sector, hotel, house-boat business, retail trade, etc. C

10. Mr. Raju Ramachandran, learned senior counsel, appearing for the Banks, argued that the loan, advanced for such purposes, namely, purchase of sheep and buffalos, and running of dairy unit etc. being agriculture loan, does not fall within the purview of the Scheme as such loan cannot be waived off under the Scheme. The very same submission was pressed into service before the sub-Court, Rajouri as well as before the District Court. Though purchase of buffalos and sheep related to agriculture and allied activities, it cannot be denied that from the buffalos, the borrower can establish a dairy unit and earn from the said business. As rightly pointed out by the Courts below, in view of clause 2(d)(i), the word "etc." in the definition of "Eligible Loans" connotes that besides the activities cited as example for business activity there are other business activities which could be included under the Scheme. The said liberal interpretation cannot be ruled out particularly, the Debt Relief Scheme was introduced mainly as a relief to the borrowers (emphasis supplied) in the militant dominated State during the relevant time. In the light of the intention of the Government, object of the Scheme, namely, to help the borrowers who were indebted and unable to repay, we are unable to accept the D
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- A stand taken by the appellant-Banks and concur with the liberal interpretation of the Courts below.

11. Learned senior counsel further contended that in the absence of specific plea in the form of written statement or counter affidavit, the Court should not have given such relief applying the Scheme. As observed earlier, it is true that all the respondents were served by publication in the daily newspapers. We have already referred to the fact that in most of the cases amount borrowed was less than Rs.10,000/-, that may be one of the reasons, the respondents failed to contest the suit. In those circumstances when the Government of India itself with the assistance of the State of Jammu & Kashmir brought a Scheme called "Debt Relief Scheme" and the same was available on the date when all the suits were pending, considering the special circumstances, we are of the view that the course adopted by the Courts below cannot be faulted with. Though such recourse is alien to the civil proceedings, in view of the peculiar facts and circumstances as noted in the loan waiver scheme and the other reasons mentioned in the paragraphs supra which were noted by the Courts below, we are not inclined to interfere in these appeals.

12. Regarding the order dated 28.9.2000 passed by the High Court in Civil Revision No. 165 of 1999, it is true that while considering the civil revision petition filed against the order passed by the executing Court, the High Court relying on the provisions in the Hand Book of instructions issued by the Reserve Bank of India that the activities i.e., dairying and rearing of sheep are allied to agriculture and, therefore, excluded from the scheme, quashed the order of the trial Court and directed the executing Court to restore to its original number and proceed with the matter in accordance with law. Learned senior counsel, by pointing out the above said order of the very same High Court, submitted that the said order passed in the civil revision petition is in consonance with the Scheme and prayed for similar order in all the other appeals. For the reasons stated in the earlier paragraphs with regard to the Civil Appeals 4817-4851/

2002 and Civil Appeal Nos. 4852-4854 of 2002, we are not inclined to accept the same. In view of the peculiar position as explained by both the Courts below and considering the fact that the amounts involved are less than Rs.10,000/- in most of the cases and those loans were advanced prior to 1996 during the prevalence of militancy in the State of Jammu & Kashmir, we are not inclined to interfere with any of the reliefs granted by the Courts below.

13. In the light of the above discussion, we conclude the above-mentioned questions as under:

In the Debt Relief Scheme issued by the Government of India, the very definition of 'business activity' has nowhere been defined exhaustively but only a few examples are mentioned which can be extended up to a number of other activities which have not explicitly mentioned for the term 'etc.' which has been used in the Scheme. Following the very reason for introduction of the said Scheme i.e. to offer financial help to the poor and indebted borrowers of militancy hit Jammu & Kashmir, the courts below rightly concluded that the agricultural and allied business activities viz., the types of trade/business which are substantially or partially depending on agriculture and/or agricultural produce as a business activity under the said Scheme. Further, the Reserve Bank of India Guidelines cannot be strictly followed as it has not been mentioned to be followed in the Scheme and, therefore, we should not interpret the term 'business activity' under the strict rule of interpretation. Accordingly, we approve the conclusion and the ultimate decision of courts below granting relief to the respondents. Though the course adopted by the sub-judge, Rajouri or the District Judge were not acceptable, in view of our conclusion on the merits of the orders passed, the dismissal of execution petitions should not be set aside only due to procedural irregularities.

14. Apart from these aspects, it is pertinent to mention that sub-clause (a) of Section 3 of the Notification makes it clear that the amount waived off will be reimbursed to the

- A concerned Bank/Financial Institution by the Department of Jammu & Kashmir Affairs, Government of India on recommendation of the Committee to be set up at the State Level. Even after the orders passed by the sub-Court and thereafter by the District Court, the Banks could have availed the benefit of reimbursement as provided under clause 3(a) of the Scheme. Unfortunately, the appellant-Banks instead of availing the same, agitated the matter up to the level of this Court by spending more money for recovery of petty amounts from the small borrowers. The appellant-Banks are free to approach the Department of Jammu & Kashmir Affairs, Government of India who brought the Debt Relief Scheme, under clause 3(a) for reimbursement, if the same is permissible, at this juncture for which we express no opinion.

15. Considering all these peculiar aspects, particularly, indebtedness and inability to repay the loan amount by the borrowers due to continuous militant activities in the State of Jammu & Kashmir particularly, at the relevant time, the amounts borrowed which were less than Rs. 10,000/- in most of the cases, liberal interpretation of the Courts below in the light of the various clauses in the Scheme itself and also of the fact that sub-clause (a) of Section 3 of the scheme provides reimbursement of waived loan amounts, we are not inclined to interfere with the orders of the Courts below. Consequently, all the appeals fail and are, accordingly, dismissed. No costs.

F B.B.B.

Appeals dismissed.