

Bhola Nath and ors. Vs. State Bank of India and ors.

Bhola Nath and ors. Vs. State Bank of India and ors.

SooperKanoon Citation : sooperkanoon.com/451860

Court : Allahabad

Decided On : Jan-11-2002

Reported in : 2002(1)AWC644

Judge : G.P. Mathur and ;R.P. Misra, JJ.

Acts : Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 - Sections 3

Appeal No. : C.M.W.P. No. 585 of 2001

Appellant : Bhola Nath and ors.

Respondent : State Bank of India and ors.

Advocate for Def. : A.K. Mishra, Adv. and ;S.C.

Advocate for Pet/Ap. : R.N. Kesari, Adv.

Disposition : Petition dismissed

Judgement :

G.P. Mathur, J.

1. This writ petition under Article 226 of the Constitution has been filed for quashing of the citation dated 29.12.2000 asking the petitioners to deposit Rs. 8,76,449.

2. The petitioner Nos. 1 to 4 are partners of petitioner No. 5 which is a registered partnership firm carrying on business in Sirsa Bazar. Allahabad. The firm opened a current account in the State Bank of India. Branch Sirsa Bazar, and was granted a cash credit facility with a limit of Rs. 6 lakhs. An overdraft facility was also provided by the bank. It appears that the petitioners did not keep their account in order and did not deposit the dues of the bank. The bank accordingly sent a certificate to the Collector to recover the amount under U.P. Public Moneys (Recovery of Dues) Act, 1972. The Collector accordingly initiated proceedings to recover the amount as arrears of land revenue and Tehsildar, Meja, thereafter issued a citation to the petitioners asking them to deposit the amount which has been impugned in the present writ petition.

3. Sri R. N. Kesari, learned counsel for the petitioners has submitted that the provisions of U.P. Public Moneys (Recovery of Dues) Act, 1972, cannot be invoked to recover the dues of the bank. He has placed reliance on a Full Bench decision in Smt. Sharda Deui v. State of U.P., 2001 ALR 156, wherein it has been held that a banking company can recover only such loan under U.P. Public Moneys (Recovery of Dues) Act, 1972, which has been advanced or paid under a State Sponsored Scheme and not any other type of loan. Learned counsel has urged that since the petitioners had not been given loan under any State Sponsored Scheme but had been given a cash credit facility, the dues of the bank cannot be recovered under the aforesaid Act. There can be no quarrel with the proposition of law urged by the learned counsel for the petitioners. The petitioners had not been given any loan by the State Bank of India under any State Sponsored Scheme but had been given a cash credit facility and, therefore, the provision of U.P. Public Moneys (Recovery of Dues) Act, 1972, cannot be availed of in order to recover the dues of the bank. But the question still remains whether in the facts and circumstances of the case, the petitioners are entitled to claim such a relief in the present writ petition under Article 226 of the Constitution.

4. This petition was heard for admission by a Division Bench on 8.1.2001 when an interim order was passed and the relevant portion thereof is being reproduced below.

'Shri R. N. Kesari, learned counsel for the petitioner made a statement that the petitioners will deposit Rs. 2,00,000 (rupees two lacs) in cash or by bank draft with the Branch Manager, State Bank of India, Sirsa, Allahabad and another amount of Rs. 2,00,000 (rupees two lacs) in cash or by bank draft with the said Branch Manager on or before 10.2.2001 and 10.3.2001. respectively, whereafter he proposes to file a representation. Which may be decided by the said bank in accordance with law and rules and the guidelines issued by the Reserve Bank of India from time to time.

Shri A.K. Mishra, appearing for the bank has said that for the same relief the petitioner had filed a suit, which has also been dismissed and appeal is pending. To this Shri Kesari stated that the suit was only for interest amount and in case a settlement is reached, the petitioner will withdraw the appeal.

Relying upon the aforesaid statement of Shri Kesari, the recovery proceedings are stayed till 10.2.2001 to enable the petitioner to deposit rupees two lacs in cash or by bank draft with the branch manager concerned of the said bank. In the event of non-payment, the recovery proceedings shall stand automatically renewed on 11.2.2001 and interim stay application in writ petition shall be deemed to be dismissed.....'

5. When the case was taken up for hearing, learned counsel for the bank made a statement that the petitioners did not comply with the aforesaid order and did not deposit any amount. The fact that the petitioners did not deposit any amount has also been admitted by Sri R. N. Kesari, learned counsel for the petitioners. When the petitioners were threatened with the recovery of Rs. 8,76,449, they filed the writ petition. On the representation made by the petitioners that they will deposit some amount, the recovery proceedings were stayed on the condition that they will deposit Rs. 2 lakhs by 10.2.2001 and a further sum of Rs. 2 lakhs by 10.3.2001. By this process, the petitioners were able to prevent their arrest and also attachment and sale of their properties. In *M/s. Lal and Kumar v. State of U.P.*, 1998 (1) AWC 2.70 (NOC) : AIR 1998 All 156, a Division Bench observed that overshooting a cash credit limit and running an overdraft offends the contract between the borrower and the bank and thus, the equity was against the borrower

and, consequently, his writ petition challenging the recovery proceedings was liable to be dismissed. This decision was considered by the Full Bench in *Smt. Sharda Devi v. State of U.P.* (supra) and after noticing the provisions of the Act. It was observed as follows :

'..... it is true that exercise of jurisdiction under Article 226 of the Constitution is discretionary in nature and the Court may refuse to exercise discretion in favour of a person if it finds that equity is against him or it will result in miscarriage of justice. While exercising its powers, the Court must keep in mind the well-settled principles on which such high prerogative writs are issued. At the same time, it must be kept in mind that we are governed by rule of law and all actions taken must be supported by law. It cannot, therefore, be laid down as a principle of universal application that even though the proceedings initiated for recovery of the loan as arrears of land revenue are without Jurisdiction as the loan does not fall within the purview of the Act, yet the Court would shut its eyes and decline to exercise jurisdiction under Article 226 of the Constitution only on the ground that the borrower owes money to the bank. In a proper case, the Court would not hesitate to issue appropriate writ as the facts and circumstances of the case may justify.'

6. When the Tehsildar proceeds to recover certain amount from a person as arrears of land revenue, he issues a citation to him for his appearance and can take steps to arrest and detain the person in civil prison and also to attach and sell other properties of the defaulter. It is common knowledge that if the defaulter is able to secure even a temporary or time bound stay order against the recovery proceedings, he is able to delay the process of recovery for a long period as the Tehsil authorities lay off their hands. The Collector and the Tehsildar are busy persons and have to perform many Governmental functions. They are overburdened with work and unless the creditor is keenly pursuing the matter, they normally do not revive the recovery proceedings immediately after expiry of the time bound stay order. It is common experience that some clever defaulters who manage to get even a time bound stay order by making a small deposit or giving an undertaking to deposit the amount are thus able to forestall the recovery proceedings for a long time. Therefore, it is absolutely necessary that such borrowers who have undertaken or have been directed to deposit some amount as

a condition for staying the recovery proceedings must be held strictly bound by the said conditions and in the event of non-compliance of the conditions imposed, this Court will be fully justified in declining to grant the relief under Article 226 of the Constitution as the proceedings under the said provision are discretionary in nature and cannot be claimed as a matter of right.

7. In the present case, the admitted position is that the conditions on which the recovery proceedings were stayed by this Court have not been complied with by the petitioners. In fact, the petitioners did not deposit any amount at all. It appears that the petitioners made a false statement on 8.1.2001 with the sole aim of getting a stay order. Not only the petitioners did not deposit the amount within the time fixed by this Court but they have not done so even later on or till the time when the writ petition was taken up for hearing. There is no explanation at all why the petitioners did not comply with the statement made by them. We are therefore, clearly of the opinion that the conduct of the petitioners has been very unfair and the statement regarding making of deposit was made with the sole aim of getting a stay order. Therefore, in the facts and circumstances of the case, this Court would be fully justified in not granting any relief under Article 226 of the Constitution in favour of the petitioners.

8. For the reasons mentioned above, the writ petition is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com