

Mohan Swaroop Vs. Tehsildar and anr.

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Court : Allahabad

Decided On : Feb-19-2002

Reported in : 2002(2)AWC1096

Judge : M. Katju and ;Rakesh Tiwari, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 6837 of 2002

Appellant : Mohan Swaroop

Respondent : Tehsildar and anr.

Advocate for Def. : C.P. Mishra, Adv.

Advocate for Pet/Ap. : T.S. Dabas, Adv.

Disposition : Petition dismissed

Judgement :

M. Katju and Rakesh Tiwari, JJ.

1. Heard Sri T. S. Dabas, learned counsel for the petitioner and Sri C. P. Mishra, learned counsel appearing on behalf of the respondents.

2. The petitioner has challenged the impugned recovery certificate dated 1st August, 2001, Annexure-2 to the writ petition. The petitioner took a loan from the Bank of Baroda, respondent No. 2 and the recovery certificate has been issued in that 'connection.

3. The learned counsel for the petitioner has prayed that instalments should be fixed. In our opinion High Court has no power under Article 226 of the Constitution to fix instalments. Fixing instalments really means re-scheduling the loan. Such re-scheduling, in our opinion, can only be done by the Bank or the Financial institution which granted the loan, and not by the High Court.

4. A writ of certiorari under Article 226 of the [Constitution of India](#) lies only when there is an error of law apparent on the face of the record. A writ cannot be issued merely for fixing the instalments as that will be re-scheduling the loan. So far as writ jurisdiction is concerned, there are well-settled principles on which writ jurisdiction can be exercised and it is not open to this Court to transgress those limits whenever it so pleases. This Court has to function under the law and has to observe judicial discipline by following the well-settled principles for exercising the power under Article 226 of the Constitution.

5. With the aforesaid observations, the writ petition is dismissed.

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