

Krishna Rice Mills and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-03-2000

Reported in : 2000(3)AWC2583

Judge : Palok Basu and ;Ratnakar Dash, JJ.

Acts : Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1973 - Sections 3(1)

Appeal No. : C.M.W.P. No. 45342 of 1999

Appellant : Krishna Rice Mills and Others

Respondent : State of U.P. and Others

Advocate for Def. : Satish Chaturvedi, ;R.K. Saxena, Advs. and ;S.C.

Advocate for Pet/Ap. : Ranjeet Saxena, Adv.

Judgement :

Palok Basu and Ratnakar Dash,JJ.

1. Petitioner M/s. Krishna Rice Mills through its partners Arun Kumar. Smt. Prakashwati Devi widow of late Krishna Prasad and Smt. Bina Devt wife of Ashok Kumar have challenged the recovery proceedings initiated at the instance of the State Bank of India, Siswa Bazar Branch, Maharajgaunj. hereinafter referred to as the Bank through the recovery certificate sent for collection as arrears of land

revenue to the revenue authorities impleaded as opposite party Nos. 1, 2, 3 and 8 in this writ petition. Opposite party Nos. 6 and 7 are the Industry Officers presently not connected with the dispute in issue.

2. When the writ petition was filed on 27.10.1999, the respondent bank was permitted to have from the petitioners a deposit by cash or by bank draft of the sum of Rs. 3,00,000.00 [Rupees Three lacs only) if paid on or before 30.11.1999 and also permit the petitioners to file a fresh term of proposal for payment of the remaining amount. The recovery certificate indicates that the petitioner was called upon to deposit Rs. 10,42,987.00 (Rupees Ten lacs forty-two thousand nine - hundred eighty seven only) in which interest upto 19.1.1999 was included.

3. It is not in dispute that the petitioners have deposited the aforesaid sum of Rs. 3 lacs in pursuance of the interim order dated 27.10.1999. However, it is also not in dispute that the petitioners' representation/ rehabilitation proposal has not been considered by the Bank inspite of the observations existing in the aforesaid interim order of this Court.

4. Shri Ranjeet Saxena, learned counsel for the petitioners has been heard at length. Shri Satish Chaturvedi for the Bank and Shri R. K. Saxena, standing counsel for the recovering official and other state officials have also been heard. Since the affidavits have been exchanged between the parties, the writ petition is being finally disposed of at the admission stage as prayed.

5. The principal argument advanced on the last occasion as reiterated today is relating to the applicability of the provisions contained in the U. P. Public Money Recovery of Dues Act, 1973 (for short the Act) to the present facts of the case. It is strongly contended by Shri Saxena that the provisions of the aforesaid Act are not attracted towards the petitioners as they took only a 'cash credit facility' from the bank and never took any loan or advance or grant for getting financial assistance under any 'State-sponsored scheme.' Reliance has been placed on the Division Bench decision of this Court in C.M.W.P. No. 953 of 1997, Anupam Sari Centre and others v. Collector, Padrauna and others, decided on 3.11.1998. There is no doubt that the said decision has concluded on the facts arising in those cases that those petitioners borrowed amounts from the bank which was not

backed up by any 'State-sponsored scheme.' On this analogy, a finding has been recorded that unless the money advanced to the petitioners was shown to be under any State-sponsored scheme, it was not open to the bank in those cases .to recover the amount from those petitioners.

The aforesaid ruling is not available to the petitioners in the instant case, Anupam Sari was confined to the facts, the decision emerged on those facts and circumstances and reasoning set out in the said decision should be confined to those facts. Suffice it to say that, there is no warrant for the proposition that the adjectival clause set out in the beginning of clause (b) of sub-section (1) of Section 3 of the Act. have to be read and connected with last words 'under a State sponsored scheme'. If a close look is had to the language used in clause (b), which is attracted to the facts and circumstances of the instant case, the starting words 'to any agreement relating to a loan, advance or grant given to him' is a clause sufficient to include the petitioner and. therefore, the proposition 'or' appearing thereafter creates another contingency which is 'relating to the credit in respect of. or relating to hire-purchase of goods sold to him by a banking company..... under a State-sponsored scheme.' The second clause, therefore, is independent of the first clause referred to above specifically and, therefore, there is. to repeat, no force in the argument of Shri Saxena.

6. In view of the aforesaid reason without commenting further on decision of Anupam Sari, in the facts and circumstances set out above, the petitioners' case is squarely covered by clause (b) of subsection (1) of Section 3 of the Act, consequently the petitioners reliance on the aforesaid decision is wholly misplaced.

7. It was emphasised by Shri Saxena that the petitioners have deposited Rs. 3 lacs as was undertaken on behalf of the petitioner when the interim order was passed staying the recovery proceedings to enable the said deposit to be made. Therefore, it was said that the petitioner may be afforded an opportunity to get the rehabilitation proposal considered by the bank.

8. Shri Satish Chaturvedi has drawn the attention of the Court to various paragraphs in counter-affidavit particularly 10, 11 and 12 which say that on the

agreement between the bank and the petitioner, the provisions of the Act are applicable and since it was a loan recoverable under those provisions, rehabilitation proposal cannot be considered under any of the provisions, rules, circulars or Government Orders existing.

9. While it is true that on the one hand, the petitioner has to pay yet about Rs. 7 lacs and odd in pursuance of the original demand through recovery certificate, it may on the other, have now swelled by about a lakh or more because of addition of the interest amount. It will be open to the petitioner to deposit Rs. 3 lacs on or before August 10, 2000 whereafter a representation may be made to the bank for fixing of further instalments reduction of penal interest etc. Therefore, the recovery proceedings against the petitioners should remain stayed till August 10, 2000.

10. It is, therefore, hereby provided that if the petitioners pay the said sum of Rs. 3 lacs on or before August 10, 2000 as indicated above, the bank shall on a representation being made by the petitioner along with a certified copy of this order while making the deposit in cash or by bank draft, consider the said representation in accordance with law and grant five consecutive equal monthly instalments to clear off the entire outstanding amount.

11. The writ petition, therefore, stands finally disposed of in the aforesaid terms. A copy of the order may be furnished to the counsel for the parties on payment of usual charges within seven days.