(2002) 01 AHC CK 0055

In the Allahabad High Court

Case No : C.M.W.P. No. 2801 of 2002

Chheda Lal APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 21-01-2002

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2002) 1 AWC 807

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : M.A. Mishra, for the Appellant; R.B. Sahai and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

I.M. Quddusi, J.—Heard Shri M. A. Mishra learned counsel for the petitioner and the learned standing counsel for the State of U.P. and the learned counsel appearing for State Bank of India. Shri R.B. Sahai.

2. The petitioner took agricultural loan of Rs. 1,36.000 from the respondent No. 3 to purchase a tractor on 14.2.1995. He has paid a sum of Rs. 1,72,000 till now as stated in paragraph 3 of the writ petition.

3. Learned counsel for the petitioner has stated that the Collection Amin is pressing the petitioner to deposit the amount in lump sum as mentioned in the recovery citation. It has been submitted by the learned counsel for the petitioner that the petitioner is ready to deposit the remaining amount of loan but due to his poor condition he is unable to deposit the entire due amount at one time. The period of loan was seven years which was ending in the year 2002 but due to default in making payment, there is breach of agreement and now the agreement in question made with the bank is not in existence. Learned counsel for the petitioner has further submitted that right of livelihood as has been enshrined in Article 21 of the Constitution will be curtailed and in case the entire

amount is recovered, the petitioner will have no means to pay entire outstanding dues in the bank concerned with interest.

4. Admittedly, the petitioner has committed some default in the payment of instalments of loan. The period of loan was seven years but due to default in making payment there is breach of agreement and hence the opposite party No. 3 has sent notice for recovery of the entire remaining amount of loan.

5. The Apex Court in the case of Narendra Kumar Chandla Vs. State of Haryana and others, , held that right to livelihood is an integral fact of the right to life. From the perspective of international law, the question posed is whether it is right to enforce a contractual liability by imprisoning a debtor in teeth of Article 11 of the International Covenant on Civil and Political Rights. The Article reads as under:

"No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. An apercu of Article 21 of the Constitution suggests the question whether it is fair procedure to deprive a person of his personal liberty merely because he has not discharged his contractual liability in the face of the constitutional protection of life and liberty as expounded and expanded by a chain of rulings of this Court beginning with Maneka Gandhi''s case.........."

6. in the case of Jolly George Varghese and Anr. v. Bank of Cochin. AIR 1980 SC 470. Hon''ble Apex Court in para 10 of the report has held as under :

"Equally meaningful is the Import of Article 21 of the Constitution in the context of Imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in the procedural essence............

It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of Daridra Narayana (land of poverty) is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation. We have put on the proviso to Section 51, C.P.C., and the lethal blow of Article 21 cannot strike down the provisions, as now interpreted."

7. Considering the facts and circumstances of the case, and also keeping in view that the petitioner has no source to deposit the entire amount due at one time and in case the recovery of loan is made by sending him in jail or by selling his such assets which are essential for him and his family for living and in the absence of which his right of livelihood enshrined in Article 21 of the Constitution

will be Jeopardized.

8. Therefore, in view of above and in view of the Apex Court''s decisions quoted above, this writ petition is disposed of with a direction that in case the petitioner pays six instalments of Rs. 23.000 each quarterly, no recovery of the amount mentioned in the impugned citation should be made from the petitioner and all the instalments may be deposited with the Bank directly and the Bank shall accept the same. The first instalment shall be payable on or before 31st March, 2002 and thereafter, remaining instalments shall be paid quarterly. It will also be open for the petitioner to deposit the entire amount in lesser instalments or at one time. After deposit of all the last instalments, the Bank concerned shall furnish a statement of account to the petitioner and in case any amount remains due as per the statement of account, the same shall also be deposited with the Bank within six weeks from the date of receipt of statements of account by the petitioner.

9. However, it is made clear that in case of any default in depositing the amount as directed above, the benefit of this order shall not be available to the petitioner and in that case, the respondent-bank shall be free to recover the entire outstanding dues from the petitioner in accordance with law.

10. In case, the petitioner deposits the amount of loan in bank, no collection charges shall be payable by the petitioner. The rate of interest shall be fixed by the bank concerned in accordance with the guidelines which was issued by the Reserve Bank of India at the time when the agreement in question was executed.

11. The petition stands disposed of with the above directions.

