
(2004) 02 AHC CK 0205
In the Allahabad High Court
Case No : C.M.W.P. No. 7162 of 2004

Gajadhar Singh and Another

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 4
Constitution of India, 1950 — Article 226

Citation : (2004) 4 AWC 3097

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; Shashi Kant, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition was heard by me on 26th February, 2004 and after hearing learned counsel appearing on behalf of the parties the same was dismissed, for the reasons to be recorded later on. Now here are the reasons for dismissing the aforesaid writ petition.

2. The petitioners-plaintiffs filed the present writ petition under Article 226 of the Constitution of India along with an application u/s 5 of the Limitation Act for condonation of delay, which is approximately two years. It is stated by learned counsel appearing on behalf of the respondents-defendants that the petitioners have earlier filed a writ petition being Civil Misc. Writ Petition No, 4032 of 2004, which was dismissed by this Court on 3rd February, 2004. The record of the earlier writ petition has also come before this Court, along with the records of present case. The earlier writ petition was filed by the petitioners with the similar prayer as that of the prayer made in the present writ petition, as would be clear from the prayer, which are reproduced below :

Prayer of Civil Writ Petition No. 4032 of 2004 :

(i) Issue an order writ or direction in the nature of certiorari quashing the

aforesaid invalid citation dated 18.5.1992 issued on the basis of invalid time barred recovery certificate dated 7.12.1991 and this Hon''ble Court shall be further pleased to quash the whole illegal recovery proceedings being initiated by the respondent No. 2.

(ii) Issue a writ, order or direction in the nature of mandamus commanding respondent Nos. 1 to 3 not to take coercive methods and not to proceed against the petitioners on the basis of time barred and invalid recovery certificate.

(iii) Issue a writ order or direction in the nature of mandamus commanding respondent Nos. 2 and 3 to release the attached tractor of the petitioners in their favour and they be further directed that attached tractor be not sold.

(iv) Award cost of this writ petition.

(v) Issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case."

"Prayer of Civil Misc. Writ Petition No. 7162 of 2004 (Present writ petition) :

(i) Issue an order or writ or direction in the nature of certiorari quashing the aforesaid invalid citation dated 18.5.1992 issued on the basis invalid time barred recovery certificate dated 7.12.1991 and quash the whole illegal recovery proceedings being initiated by respondent No. 2 and this Hon''ble Court may further be pleased to quash the impugned order dated 9.11.1995 passed by the IIno Upper Civil Judge (S.D.), Allahabad in O.S. No. 346 of 1992 and order dated 21.7.2001 passed by Upper District Judge, Room No. 18, Allahabad in Misc. Civil Appeal No. 353 of 1995. Gajadhar Singh and Anr. v. Bank of Baroda and Ors.

(ii) Issue a writ, order or direction in the nature of mandamus commanding respondent Nos, 1 to 3 not to take coercive methods and not to proceed against the petitioners on the basis of time barred and invalid recovery certificate.

(iii) Issue a writ, order or direction in the nature of mandamus commanding respondent Nos. 2 and 3 to release the attached tractor of petitioners in their favour and the attached tractor be not sold.

(iv) Award cost of this writ petition.

(v) Issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the ends of justice."

3. The earlier Writ Petition No. 4032 of 2004 filed by the petitioners has been dismissed by this Court as not pressed after the learned counsel appearing on behalf of the petitioners fully argued the case. The order passed by this Court dated 3rd February, 2004 is reproduced below :

"Heard learned counsel for the petitioner, learned standing . counsel and Sri Shashi Kant, learned counsel appearing for the bank.

Challenge in this petition is the citation dated 8.5.1992. There is further prayer

that the respondents be commanded not to take any coercive measure to recover the amount pursuant to the recovery certificate dated 7.9.1991.

During the course of arguments, there appears to be no dispute about the fact that the petitioner No. 1 and father of petitioner No. 2 have already filed a civil suit bearing O.S. No. 346 of 1992 challenging the recovery proceedings which is in question in this writ petition. There is also no dispute about the fact that the petitioners have applied for grant of temporary injunction which was rejected on 9.11.1995 and thereafter, misc. appeal has also been dismissed on 21.7.2001, The petitioners instead of taking recourse of filing writ petition against the orders of civil court by which injunction application has been rejected has taken recourse to file present writ petition challenging the recovery proceedings of the year 1991-92 which is admittedly, under challenge in the civil suit.

During course of arguments, learned counsel for the petitioners submits that he does not want to press this writ petition on merits and therefore, same may be dismissed as not pressed.

In view of the aforesaid, this writ petition is dismissed as not pressed.

Dated : 3.2.2004

Sd. S. K. Singh, J."

4. From the circumstances stated above, it is submitted that the provision of Chapter XXII. Rule 4 of the High Court Rules, which prohibits the second writ petition for the same cause of action is fully applicable and therefore, this writ petition being the second writ petition for the same cause of action liable to be dismissed in view of the provision of Chapter XXII, Rule 4 of the High Court Rules.

5. In view of what has been stated above, this writ petition is dismissed with an exceptional cost of Rs. 5,000 (Rupees five thousand), which is to be paid by the petitioners to the Legal Service Authority, High Court, Allahabad. The office of this Court is directed to supply a copy of this order to Legal Service Authority, High Court, Allahabad, so that the cost be realised from the petitioner.