

(2002) 04 AHC CK 0154
In the Allahabad High Court
Case No : Special Appeal No. 107 of 2002

Gokul Dairy and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Agricultural Credit Act, 1973 — Section 11, 11A, 2
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279

Citation : (2002) 3 AWC 1863 : (2002) 2 UPLBEC 1674

Hon'ble Judges : Vineet Saran, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Suman Sirohi and K.P. Agarwal, for the Appellant; Pankaj Bhatia, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—The appellants are aggrieved by the order dated 20th December. 2001, passed by the learned single Judge in Civil Misc. Writ Petition No. 41020 of 2001 dismissing their writ petition, which is under challenge in this special appeal.

2. We have heard Sri K. P. Agarwal, senior advocate, assisted by Ms. Suman Sirohi for the appellants ; Sri Pankaj Bhatia learned counsel for the respondent No. 4 Bank ; and the standing counsel for the respondent Nos. 1 to 3.

3. The brief facts as borne out from the record are that the appellant No. 1 (M/s. Gokul Dairy, a partnership firm) and its partners appellant Nos. 2, 3 and 4 had applied for loan of Rs. 13.53 lakhs from respondent No. 4. Bank of India. Admittedly; a term loan of Rs. 8.53 lakhs was sanctioned and disbursed by the bank and further a cash credit limit of Rs. 5 lakhs was sanctioned in favour of the appellants. The appellants, who had availed the loan, were unable to pay it back. On the appellants defaulting in repayment of the loan, initially a recovery certificate dated 10.5.1999 was issued for a sum of Rs. 12,56,634 for recovery of

the amount from them as arrears of land revenue.

4. Challenging this recovery the appellants filed a Writ Petition No. 23269 of 1999, which was disposed of by a learned single Judge of this Court vide its order dated 28.5.1999, the operative portion of which is quoted below :

"The recovery proceedings against the petitioners shall remain stayed provided the petitioners deposit Rs. 5,00,000 by 1st July, 1999, Rs. 5,00,000 by 1st August, 1999, Rs. 5,00,000 by 1st September, 1999 and the balance amount by 1st October, 1999. The petitioners shall, however, not alienate any property movable and immovable till the entire amount is paid. In case of default the entire amount can be realised as arrears of land revenue."

5. Instead of complying with the aforesaid order passed in that writ petition, the appellants filed a Special Appeal No. 504 of 1999. The Division Bench of this Court disposed of the appeal vide order dated 28.6.1999, the operative portion of which is quoted below :

"It is provided that in case the appellant files any objection before the Recovery Officer, the same shall be considered and disposed of expeditiously by means of a reasoned order within a period of two weeks from the date of production of a certified copy of this order. However, for a period of three weeks, no coercive measures shall be taken against the appellants in connection with the Impugned recovery.

The Judgment under challenge is maintained subject to the above observations. The appeal is disposed of accordingly."

6. By this order in special appeal, the judgment in that writ petition was maintained and the appellants were thus required to deposit the Instalments as indicated in the judgment of the learned single Judge. Admittedly, the appellants did not deposit any Instalments and chose to file another Writ Petition No. 27565 of 2000 challenging the same recovery again. A Division Bench of this Court disposed of the aforesaid writ petition vide order dated 18.4.2001, the operative portion of which is quoted below :

"In view of the aforesaid statement of the learned counsel for the petitioner, the writ petition is finally disposed of with the following directions :

(1) The recovery proceedings against the petitioner shall remain stayed till 18th May, 2001, that the petitioner deposit Rs. 5,00,000 in cash or by bank-draft on or before 18th May, 2001. If this deposit is not made, the petition shall be deemed to have been dismissed, this order shall come to an end and recovery proceeding as on date shall start on 19.5.2000.

(2) If the aforesaid amount is made the recovery proceeding shall remain stayed till 15th June, 2001, entitling the petitioners to make a representation before the Bank Manager concerned within fifteen days of the deposit with proof of deposit.

(3) If any amount is found payable the petitioners shall be permitted to deposit

the same in three equal monthly instalment on or before 15th July, 2001, 15th August, 2001 and 15th September, 2001. If all the payments indicated above are made by the petitioners in time, the Bank shall recall the recovery certificate.

(4) In case of default in making any of the payments indicated above the writ petition shall be deemed to have been dismissed, this order shall stand automatically vacated and the recovery proceeding shall stand renewed as on date."

7. The aforesaid order was again not complied by the appellants and they filed a fresh Application No. 46092 of 2001 in the said Writ Petition No. 26753 of 2000, praying for extension of time. The said application was disposed of by the Division Bench vide order dated 15.5.2001, which is quoted below :

"Though a final order has already been passed by this Court on 18.4.2001 based upon the statement made by the petitioners counsel permitted to deposit Rs. 5,00,000 in cash or by bank-draft on or before 18th May, 2001, this application has been moved with the prayer that the aforesaid time may be extended till 31st August, 2001, to enable the petitioners to deposit Rs. 5,00,000.

Though the petition is signed by Ms. Bushra Maryam, Sri K. P. Agarwal, learned senior advocate of this Court has appeared to press the application. Having regard to the arguments of Sri K. P. Agarwal not so much as to the merits of the case but much to the convincing advocacy of Sri K. P. Agarwal time is extended for one month as prayed by him. The petitioner therefore, shall deposit Rs. 5,00,000 on or before 18th June, 2001, in cash or by bank-draft with the Branch Manager, Bank of India Branch, Sulem Sarai, Allahabad. Consequential amendment in the order is necessary with regard to the rest of the provisions contained in the said order.

In view of extension of time by one month, it is hereby directed that the date mentioned twice in paragraph 1 as 18th May, 2001 shall be read as 18th June, 2001, in paragraph 2 the date mentioned as 15th June, 2001, shall be read as 30th June, 2001, by which time the representation shall be moved by the petitioner before the Branch Manager concerned, in paragraph 3 the date mentioned as 15th July, 2001, shall be committed instead 15th October, 2001, shall be added. In all other respects the contents of the order are left intact.

Application stands disposed of subject to aforesaid amendment."

8. Even after the further enlargement of time, the appellants did not deposit the instalments. Time and again, they approached this Court and gave assurances of depositing the loan amounts but failed to do so.

9. Since the appellants had again defaulted in depositing the amount, the recovery against them stood automatically revived. They then filed a third Writ Petition No. 41020 of 2001 praying for same/ similar relief that the recovery against them may not be pressed and the respondents may be commanded not to use any coercive methods against the appellants. It is the judgment dated

20.12.2001 passed in this writ petition which is under challenge in this special appeal.

10. It is noteworthy that in paragraph 3 of this writ petition, the appellants had categorically stated that "this is the petitioner's first writ petition. He had not approached this Hon'ble Court earlier, either in writ jurisdiction or in any other jurisdiction." Although, it is true that some orders passed in the earlier two writ petitions had been annexed in this Writ Petition No. 41020 of 2001, but by merely filing such orders, the appellants cannot get away with the aforesaid categorical statement made in paragraph 3 of the petition. Besides, this, it is further noteworthy that the appellants had also filed a Civil Suit No. 26 of 2000 in the Court of Civil Judge (Senior Division) Allahabad, challenging the same recovery which, after contest by the bank, was dismissed for default on 10.11.2000 and the matter had become final between the parties. At the time of arguments, the filing of the suit and its dismissal was accepted by the learned counsel for the appellants. This fact has been concealed by the appellants in all the three writ petitions filed by them as also in the present special appeal.

11. The main thrust of the arguments of Sri K. P. Agarwal, learned senior counsel appearing for the appellants was :

(i) that the bank has committed fraud in combining the two loans, namely, the term loan and the cash credit limit and recovering the combined loans as arrears of land revenue (whereas the term loan alone could have been recovered as arrears of land revenue and not the advance under the cash credit limit) ; and

(ii) that some property, although owned by the appellants but not mortgaged by the bank, could not be sold/auctioned for recovery of loans taken by the appellants.

12. With regard to the first issue involved, Sri K. P. Agarwal has accepted that in the earlier three writ petitions, namely. Writ Petition Nos. 23269 of 1999, 26753 of 2000 and 41020 of 2001, this ground of fraud on, the part of the bank in combining the two loans and recovering the same as arrears of land revenue had not been raised. However, the learned counsel states that a ground of fraud can be raised at any stage of the proceedings. In support of his contention learned counsel has cited two decisions of the Apex Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.,

13. Be that as it may, the learned counsel was first required to satisfy us that by combining the two loans and recovering the same as arrears of land revenue, the bank had committed fraud. Sri K.P. Agarwal argued that it was only the term loan which was an agricultural loan availed by the appellants and could be recovered u/s 11 of the U. P. Agricultural Credit Act, 1973, whereas the loan advanced as cash credit limit, was a business loan for which the provisions of the said Act would not be attracted, and hence by issuing a recovery certificate for the combined loan, the bank had committed fraud.

14. Sri Pankaj Bhatia, learned counsel appearing for the bank has first submitted that the combining of the two loans and recovering them as arrears of land revenue was well within the knowledge of the appellants much prior to the filing of the first writ petition in 1999. He submits that the notice for recovery of the loan was issued by the bank way back on 23.2.1999, (a copy of which has been filed as Annexure-1 to the affidavit filed in support of the stay application in this special appeal). In paragraph 1 of this notice, the description of two loans granted to the appellant had been given and all the three writ petitions had been filed by the appellants after the receipt of this notice. As such, the appellants cannot now come up and plead that this alleged ground was not available to them when the writ petitions were filed.

15. Sri Bhatia has further argued that the recovery of both the loans was being made under Uttar Pradesh Agricultural Credit Act, 1973. Section 11 of the said Act deals with the recovery of dues of a bank, wherein it is provided that "any amount due to the bank on account of financial assistance given to an agriculturist be paid by the sale of the land or" Even in Section 11A of the said Act, which deals with the recovery in case of personal security, the recovery can be made of any amount of the financial assistance granted by a bank to an agriculturist. Section 2 (b) of the said Act defines an "agriculturist" as a person who is engaged in agriculture. "Agriculture" is defined u/s 2 (a) of the said Act, which includes dairy farming, the purpose for which the loan in question has been taken by the appellants. Further, Section 2 (e) of the said Act defines "financial assistance" which means assistance granted by way of loan, advance, guarantee or otherwise to an agriculturist for agriculture purposes. From a bare reading of the aforesaid provisions of the Act, it is clear that the financial assistance includes loan, advance, guarantee or otherwise to an agriculturist for agriculture purpose. It is not denied by the appellants that the loan had been taken for dairy farming which is covered under the definition of agriculture purpose. Thus, the term loan as well as cash credit limit given by the bank would both be covered under the definition of "financial assistance". The learned counsel for the bank thus contends that the recovery of both the loans (term loan as well as cash credit limit) being made by the bank would be covered under Sections 11 and 11A of the Act. In support of this contention that the combined financial assistance given by the bank would be termed as an agricultural loan, the learned counsel has relied on a Division Bench decision of this Court passed in *Atma Ram v. Bank of India* 1990 AWC 117.

16. Considering the aforesaid, we do not find force in the arguments of the appellants that the respondent bank has committed fraud in combining the two loans and recovering the same as arrears of land revenue. Even otherwise, we are of the opinion that adopting a wrong procedure for recovery of an admitted loan cannot be termed as fraud, specially when the dues have not been disputed by the appellants.

17. The second point argued by the learned counsel for the appellant was that

the property of the appellants, which had not been mortgaged by the bank, could not be sold/auctioned for the recovery of loan advanced to the appellants. With regard to this, it is noteworthy that the recovery as arrears of land revenue is made u/s 279 of the U. P. Zamindari Abolition and Land Reforms Act. Sub-section (f) of Section 279 of this Act provides that the arrears of land revenue may be recovered by attachment and sale of other immovable property of the defaulter. Undisputedly, the appellants are defaulters and under this provision, their immovable property (whether mortgaged or otherwise) can be legally attached and sold for recovery as arrears of land revenue. As such, this argument of the appellant also does not have any force.

18. Sri Pankaj Bhatia, learned counsel for the respondent bank has further vehemently argued that in fact, it is the appellants who have been playing fraud on the Court by filing successive writ petitions for the same cause and obtaining interim orders after giving assurances that the loan would be repaid in Instalments and thereafter defaulting in payment of the same. In this manner, it has been submitted that the appellants have been able to postpone the recovery of public dues causing grave loss as well as harassment to his client. He thus submitted that not only should the appeal be dismissed with heavy costs, the appellant should also be held guilty for contempt. In support of this, he further contends that the appellants have not only filed successive writ petitions but had also filed a suit for the same cause, the filing of which was concealed in all the three writ petitions as well as this special appeal. In support of this, he has relied on a decision of the Apex Court in Delhi Development Authority Vs. Skipper Construction and Another, wherein it has been held that Judicial adventures by raiding one Court or the other time and again would amount to abuse of process of Court calculated to obstruct the due course of administration of justice. Learned counsel states that by filing the suit and the three writ petitions for the same/similar cause of action and thus being able to defer the recovery of loan taken from the bank amounts to obstruction in the course of justice and is thus an abuse of process of Court amounting to the appellants having committed contempt of court.

19. We are, however, not inclined to go into the question of the appellant having committed contempt of court or not but we hold that the appellants have certainly obstructed the due course of administration of justice by filing a suit as well as three writ petitions for same/similar cause of action and on earlier occasions had assured this Court of making payments in instalments only to obtain interim orders and defer the process of recovery, but always failed to honour the assurances given. Accordingly, we dismiss the special appeal with costs, which is quantified at Rs. 15,000 to be paid to the contesting respondent No. 4, Bank of India.