

(2001) 12 AHC CK 0077
In the Allahabad High Court
Case No : C.M.W.P. No. 41020 of 2001

Gokul Dairy and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 2, 7
Constitution of India, 1950 — Article 226

Citation : (2002) 1 AWC 370 : (2002) 1 UPLBEC 359

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Bushra Maryam and K.P. Agrawal, for the Appellant; S.C. and Pankaj Bhati, for the Respondent

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioners, Mr. Pankaj Bhatia, advocate, who has appeared for respondent No. 4 and also perused the record.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to get the claim of the bank satisfied first by sale of properties, which have been mortgaged, the details of which, are stated to have been given in the recovery certificate, contained in Annexure-3, not to use any other coercive measure, more particularly, the arrest of the petitioners till the claim of the respondent bank is not satisfied by sale of the properties. Further, to command the respondents not to initiate any recovery proceedings in pursuance of the recovery certificate, contained in Annexure-2 to the writ petition.

3. The relevant facts of the case giving rise to the present petition, in brief, are that on an application made by the petitioners, to the respondent No. 4, the Bank of India, Branch Sulemsarai, Allahabad, a loan of Rs. 13,50 lacs was sanctioned for establishing of a dairy farm, in the name of Gokul Dairy Farm. The

amount of loan was disbursed and paid to the petitioners after performing the formalities of execution of agreement of loan, etc. There is nothing on the record to show that dairy business was at all started by the petitioners but according to them, the said business failed and dairy was closed. The petitioners failed to repay the amount of loan. Consequently, a recovery certificate for an amount of Rs. 17,65,773.00 was issued by the Bank to the Collector, Allahabad in accordance with the provisions of U. P. Agriculture Credit Act to recover the said amount as arrears of land revenue. On 24.8.2001, the order of attachment was passed in the recovery proceedings and the petitioners were directed not to transfer the property in dispute in favour of other persons. Thereafter, a citation and sale proclamation are stated to have been issued by the authorities. The petitioners, challenging the validity of the aforesaid order, firstly filed Writ Petition No. 23269 of 1999. The said writ petition was disposed of finally by this Court by the judgment and order dated 28.5.1999. This Court permitted the petitioners to make a representation to the respondent No. 3 (in the said petition) and directed the said respondent to decide the same within the time specified (two weeks). The recovery proceedings were directed to remain stayed during the said period subject to the condition petitioners deposit an amount of Rs. 5 lacs by 1st July, 1999 ; Rs. 5 lacs by 1st August, 1999 ; Rs. 5 lacs by 1st September, 1999 and the balance by 1st October, 1999. The petitioners were also directed not to alienate the property movable or immovable till the entire amount is paid and that in case of default, the entire amount could be realized as arrears of land revenue. Apparently, the order passed by this Court was in favour of the petitioners but petitioners instead of obeying it, filed Special Appeal No. 504 of 1999 against the said decision. The special appeal was disposed of by this Court on 28.6.1999, with the direction that in case the appellants file any objection before the recovery officer, the same shall be considered and disposed of expeditiously by means of the reasoned order within a period of two weeks from the date of production of a certified copy of the said order. In other respect the judgment under challenge was maintained by the Division Bench. The petitioners even then did not obey the orders passed by the Division Bench and filed another Writ Petition No. 27565 of 2000 in violation of the provisions of Rule 7. Chapter XXII of the Rules of the Court. Legally, the said writ petition was not maintainable but this Court taking very lenient view in the matter, permitted the petitioners to deposit Rs. 5 lacs in cash or by bank draft on or before 20th May. 2001. It was further observed that if the said deposit was not made, the writ petition shall be deemed to have been dismissed and the said order shall come to an end. It was also observed that if the said amount is paid, the petitioners shall be at liberty to make a representation to the Manager of the Bank along with the proof of deposit of money which shall be decided by the Manager and if any amount was found outstanding against the petitioners, same shall be paid by 15th September, 2001, in three monthly instalments. On payment of whole amount, the recovery certificate was directed to be recalled. It was also observed that in case of default on the part of the petitioners, the writ petition shall be deemed to have been dismissed. The order was directed to stand automatically

vacated and recovery proceedings to stand renewed as on date. The petitioners instead of complying with the aforesaid order filed a Civil Misc. Application in Writ Petition No. 27565 of 2000 for extension of time to deposit the amount in question. This Court again taking a lenient view in the matter extended the time to deposit the amount in question by one month. The time schedule given in the earlier order was accordingly modified by order dated 15.5.2001. The aforesaid orders are contained in Annexures-7, 8, 9 and 10 to the writ petition. It may also be pointed out that inspite of the aforesaid orders, the petitioners did not deposit the amount in question or part thereof, on the other hand, they have also stated to have filed Original Suit No. 26 of 2000 for permanent injunction against the Bank. The fact of filing of suit has deliberately been concealed in the writ petition. However, this has been disclosed in the counter-affidavit filed on behalf of the respondent No. 4 in the contempt proceeding initiated against petitioner Nos. 2 to 4, but it is not known whether the suit was still pending or not.

4. The present petition has again been filed under Article 226 of the Constitution of India for the above mentioned reliefs.

5. Learned counsel appearing for respondent No. 4 raised a preliminary objection to the maintainability of the present petition. It was vehemently urged that the present petition was barred by the provisions of Rule 7 of Chapter XXII of the Rules of the Court, which prohibits filing of successive petitions on the same facts, which is legally not maintainable and was liable to be dismissed. He stated the facts of filing of writ petitions, special appeal, misc. application and the suit referred to above, in detail. It was urged that the petitioners failed to comply with the directions given by this Court. They have deliberately concealed the material fact of filing the Suit No. 26 of 2000 and deliberately mis-stated the facts that this was the first writ petition and the petitioners had not approached this Hon"ble Court earlier in either writ jurisdiction or any other jurisdiction. It was also stated that the petitioners have deliberately violated and flouted the orders passed by this Court, they have abused the process of the Court and they did not approach this Court with clean hands as they wanted to usurp the money of the Bank. According to him the present petition was liable to be dismissed with special costs. It was also stated by the learned counsel for the respondents that at present an amount of Rs. 20,28,161 was outstanding against the petitioners which is to be recovered as arrears of the land revenue by the authorities below on the basis of recovery certificate issued by the Bank in accordance with law.

6. On the other hand, Mr. K. P. Agarwal. senior advocate, appearing for the petitioners, submitted that in the present case, provisions of Rule 7 of Chapter XXII, of the Rules of the Court have got no application. The writ petition filed by the petitioners was legally maintainable and under the facts and circumstances of the present case it deserves to be allowed.

7. I have considered the submissions made by the learned counsel for the parties and also perused the record.

8. Rule 2 of Chapter XXII of the Rules of the Court provides as under :

(Only relevant quoted)

"Such affidavit (or affidavits) shall be restricted to facts which are within deponent's own knowledge [and such affidavit shall further state whether the applicant has filed in any capacity whatsoever, any previous application or applications on the same facts and, if so, the orders passed thereon.]"

9. In paragraph No. 3 of the writ petition, which has been verified by the deponent (Ramji Pandey) on his personal knowledge, it has been stated as under :

(Only relevant quoted)

"This is the petitioner's first writ petition. He had not approached this Hon"ble Court earlier either in writ jurisdiction or any other jurisdiction."

10. The petitioners themselves have disclosed in the writ petition the facts of filing of Writ Petition no. 23269 of 1999. After disposal of the said writ petition, the fact of filing of. Special Appeal No. 504 of 1999 and thereafter filing of Writ Petition No. 27565 of 2000 and also the fact of filing of Misc. Application No. 46082 of 2001 in Writ Petition No. 27565 of 2000 which was disposed of on 15.5.2001. The petitioners have thus deliberately filed the self-contradictory and false affidavit. Filing of false affidavit is a serious matter. A reference in this regard may be made to the decisions of the Apex Court in Dhananjay Sharma Vs. State of Haryana and Others, . In the aforesaid decisions, the view taken by the Apex Court is that filing of a false affidavit amounts to the criminal contempt and not only the author of the affidavit but also the person who has filed the affidavit is liable to be punished. Earlier in a Full Bench decision, this Court has also taken serious view in the matter of concealment of material facts. A reference in this regard may be made to the decision in Asiatic Engineering Co. Vs. Achhru Ram and Others, . Further. In Brij Mohan Rice Mill. Kishni, Mainpuri and Ors. v. Regional Manager, U.P.F.C., Agra and Anr. 1997 (3) AWC 1458 it was ruled by this Court as under :

"And such affidavit shall further state whether the applicant has filed in any capacity whatsoever, any previous application or applications on the same facts and, if so, the orders passed therein."

Thus, the above quoted provision inserted under Chapter XXII, Rule 2 of the Rules of the Court are quite comprehensive. As per this provision, the bounden duty cast on every petitioner is to disclose in his petition as to whether in any capacity whatsoever, he has filed any previous petition or application on the same facts or the matter in issue and if so he is further bound to disclose the orders passed thereon. Here the terms "previous application or applications" used in the above quoted provision includes pending and decided both. Therefore, it is immaterial whether the previous petition is pending or has been disposed of. The fact remains, that once petition is filed, irrespective of the fact

whether it is pending or disposed of the petitioner would be bound to disclose the same in subsequent petition. In our considered opinion if the petitioner does not disclose about the filing of previous petition and the orders passed thereon, it would amount to concealment of material fact and such petitioner would be guilty of filing false affidavit and would be liable to be dealt with according to law.

11. Thus, the petitioners, if prosecuted, in view of the aforesaid decisions, may be held guilty of criminal contempt. In *Bry Mohan's* case, (supra), this Court, in paragraph 31 after discussing in detail the question of concealment of relevant facts concluded as under :

"31. In view of the discussions made above, we hold that it is mandatory for each and every petitioner to state in first paragraph of the writ petition as to whether he in any capacity whatsoever, had filed any previous application/petition in the same matter, on the same facts or similar facts and if so, the orders passed thereon and the consequence of its non-compliance would be that such petitioner would be treated to have concealed material fact and has not approached this Court with clean hands and would be liable to be dealt with strictly in accordance with law."

12. So far as the submission of the learned counsel for the respondents that the present petition was hit by Rule 7 of Chapter XXII of the Rules of the Court is concerned, the same is also well-founded. Rule 7 of Chapter XXII of the Rules of the Court provides as under :

"7. No second application on same facts.--Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts."

13. The aforesaid Rule came for consideration and interpretation in the case of *Abdul Ghaffar and another v. Ishtiyaque Ahmad and Anr.* 1989 (1) AWC 306 : 1989 ALJ 297 wherein it was ruled by this Court that even if the first petition is rejected for default and not on merits, there is clear prohibition in Rule 7, noted above, that the second application shall not be competent on the same facts.

14. In *Bry Mohan's* case, (supra) after considering and relying upon the decisions in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, *Andheri and Others*, ; *B.S.M. Samtti, Roorkee V. D.M., Hardwar and Ors.* (1995) 2 UPLBEC 1182 : *Munna Industries v. State of U. P. and Ors.* 1994 (2) AWC 1064 : 1994 ALJ 1116 and *Anand Kumar Gupta v. State of V. P. and Ors.* 1992 AWC (Supp) 36 : (1993) 1 UPLBEC 165 it was ruled that Rule 7 of Chapter XXII of the Rules of the Court prohibits filing of successive petitions under Article 226 of the Constitution of India.

15. Similar view was taken in 1990 (1) AWC 732 . Even the Apex Court in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, *Andheri and Others*, , was pleased to rule that the order dismissing the first writ petition operates as *res judicata* between the parties and the person against whom the

order has been passed has got no right to file second petition on the same facts.

16. In view of the aforesaid discussion, I am of the view that the petitioners are guilty of concealment and misstatement of material facts, violation of orders passed by this Court, violation of Rule 7 of Chapter XXII of the Rules of Court, abuse of process of Court and they have not approached this Court with clean hands as they have been attempting to usurp the money of the Bank. They, therefore, do not deserve any sympathy ; but looking to the fact that contempt proceedings have already been initiated against the petitioners, which are pending disposal in this Court, I do not consider it necessary at this stage to impose special cost or to direct initiation of proceedings for criminal contempt. I simply admonish the petitioners not to commit such mistakes, as pointed out above again, failing which they will have to suffer very serious consequences. It is further directed that this order shall be without prejudice to the contempt proceedings, which are pending against the petitioners and will not affect them adversely in any manner.

17. In view of the aforesaid discussions, the writ petition fails and is hereby dismissed.