

(2002) 07 AHC CK 0057
In the Allahabad High Court
Case No : C.M.W.P. No. 17146 of 2002

Govind Prasad Gupta and Another

APPELLANT

Vs

Managing Director, U.P. State Financial Corporation and
Others

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31, 32G
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3

Citation : (2002) 4 AWC 2823 : (2003) 1 BC 296 : (2002) 93 RD 635 : (2004) 54 SCL 249 : (2002) 3 UPLBEC 2782

Hon'ble Judges : S.R. Singh, J;S.P. Mehrotra, J

Bench : Division Bench

Advocate : A.C. Tiwari, for the Appellant; H.R. Mishra, S.C., for the Respondent

Judgement

S.P. Mehrotra, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioners, inter alia, praying for issuance of writ, order or direction in the nature of certiorari quashing the impugned recovery certificate dated 26.3.2002 issued by the U. P. Financial Corporation against the petitioners (Annexure-5 to the writ petition) and further for issuance of writ, order or direction in the nature of mandamus declaring the recovery proceeding in pursuance of the recovery certificate dated 26.3.2002 as barred by limitation for recovery of the loan of the year 1986.

2. It is, inter alia, alleged by the petitioners that GEE Kay Pipes Pvt. Ltd., is registered under the Companies Act, 1956, and that the petitioner No. 1 is the Managing Director and the petitioner No. 2 is the Director of the said company, and that the U. P. Financial Corporations agreed in the financial year 1986-87 to grant term loan of Rs. 27,86,250 for machinery equipment and other assets in favour of the said company, and that sum of Rs. 26,03,050 could be released by the U. P. Financial Corporation out of the sanctioned amount of Rs. 27,86,250 upto the year 1987-88 and the unit became established.

3. It is, inter alia, further alleged by the petitioner that within four years of the term loan by the U. P. Financial Corporation, the U. P. Financial Corporation (Respondent Nos. 1 and 2} took over the possession of the unit u/s 29 of the State Financial Corporations Act. 1951 in the year 1991-92, and that the sale of the land, building of the unit of the company was made in September, 2001 for a sum of 3,75,000 and the sale of the machinery, etc. of the unit of the company was made on 12.2.2002 for a sum of Rs. 75,000.

4. It is, inter alia, further alleged that the recovery certificate dated 26.3.2002 (Annexure-5 to the writ petition) was issued by the Managing Director, U. P. State Financial Corporation, 14/88, Civil Lines, Kanpur Nagar, respondent No 4 u/s 3 of the U. P. Public Moneys (Recovery of Dues) Act, 1972 whereby Collector/District Magistrate, Kanpur Nagar was asked to make recovery against the petitioners. The recovery certificate dated 26.3.2002 (Annexure-5 to the writ petition) states that the petitioners had executed personal bond of guarantee in favour of the U. P. Financial Corporation for repayment of loan given to the said company, namely, M/s GEE Kay Pipes Private Limited.

5. We have heard learned counsel for the parties.

6. The first contention raised on behalf of the petitioners is that the recovery proceedings against the petitioners pursuant to the recovery certificate dated 26.3.2002 are barred by limitation in respect of the loan of year 1986. In this regard, it is noteworthy that the petitioners have not laid proper factual foundation in the writ petition for consideration of plea of limitation. The petitioners have not filed the agreement, etc. entered into between the company and the U. P. Financial Corporation regarding the loan in question in the writ petition. The petitioners have also not filed the copy of the personal bond of guarantee executed by them as mentioned in Annexure-5 to the writ petition. In the absence of relevant factual foundation and relevant documents, it is not possible to consider the plea of limitation raised on behalf of the petitioners. Even otherwise, as per the own allegation of the petitioners, the sale of land/building of the unit of the company (i.e. principal borrower) was made in September, 2001 while the sale of machinery etc. of the unit of the company i.e., principal borrower was made on 12.2.2002. Thereafter, the said recovery certificate dated 26.3.2002 was "issued for making recovery against the petitioners on the basis of the personal bond of guarantee executed by the petitioners. In the meantime, letter dated 9.10.2001 (Annexure-2 to the writ petition) and the letter dated 12.2.2002 (Annexure-3 to the writ petition) were written by the petitioners to the U. P. Financial Corporation wherein the petitioners acknowledged the liability for payment of dues to the U. P. Financial Corporation and made promise to make the payment to the U. P. Financial Corporation. In view of the said circumstances, the recovery proceedings against the petitioners who are guarantors cannot be said to be barred by limitation.

7. The second contention raised on behalf of the petitioners that the term loan given to the company cannot be recovered as arrears of land revenue in view of

Full Bench decision of our Court in Smt. Sharda Devi Vs. State of U.P. and Others, This plea raised on behalf of the petitioners can be considered only on consideration of the terms and conditions of the agreement, etc. entered into by the company with the U. P. Financial Corporation and the terms and conditions of the personal bond of guarantee executed by the petitioners. However, the petitioners have not filed these relevant documents. In the absence of these documents, this plea raised on behalf of the petitioners cannot be considered. Even otherwise, the Full Bench decision in Smt. Sharda Devi case (supra) mainly deals with the question of loan given under the State Sponsored Scheme. After examining the provisions of the U. P. Public Moneys (Recovery of Dues) Act, 1972 and other relevant provisions, it has been held by the Full Bench as follows (Paragraphs 31 and 32 of the said AIR) :

"..... .Therefore, if the borrower is not such a person who may satisfy the requirements of various clauses of Sub-section (1) of Section 3, no certificate can be sent to the Collector to recover the amount under the provisions of the Act. If the local agent of the bank has erroneously assumed jurisdiction and has sent a certificate even though the case is not covered by Clause (b) of Sub-section (1) of Section 3, the recovery proceedings initiated by the Collector can be challenged in proceedings under Article 226 of the Constitution. It is true that exercise of Jurisdiction under Article 226 of the Constitution is discretionary in nature and the Court may refuse to exercise discretion in favour of a person if it finds that equity is against him or it will result in miscarriage of justice. While exercising its powers, the Court must keep in mind the well settled principles on which such high prerogative writs are issued. At the same time, it must be kept in mind that we are governed by rule of law and all actions taken must be supported by law. It cannot, therefore, be laid down as a principle of universal application that even though the proceedings initiated for recovery of the loan as arrears of land revenue are without jurisdiction as , the loan does not fall within the purview of the Act, yet the Court would shut its eyes and decline to exercise jurisdiction under Article 226 of the Constitution only on the ground that the borrower owes money to the bank. In a proper case the Court would not hesitate to issue appropriate writ as the facts and circumstances of the case may justify."

"In view of the discussion made above, we are clearly of the opinion that a banking company can recover its dues by taking recourse to Section 3 of the Act only where the loan or advance or grant or credit has been given by it to a borrower under a State Sponsored Scheme and not otherwise. Any money advanced under cash credit limit facility by itself is not determinative of the matter as there is no prohibition under the Act for the State Government to notify such a facility as a State Sponsored Scheme. The real test is whether the Banking company has made the advance, etc., under a State Sponsored Scheme."

8. This decision is not applicable to the present case. In the present case, loan has been given by the U. P. Financial Corporation under an agreement with the

company, as such, the loan falls within the purview of Section 3 (1) (a) of the U. P. Public Moneys (Recovery of Dues) Act, 1972. Hence, the question of loan being given under any State Sponsored Scheme does not arise in the "present case. Similarly, recovery proceedings against the petitioners as guarantors are covered under the provisions of Section 3 (1) (d) of the U. P. Public Moneys (Recovery of Dues) Act, 1972. Therefore, the second plea raised on behalf of the petitioners cannot be accepted.

9. The third contention raised on behalf of the petitioners was regarding the sale made by the U. P. Financial Corporation in respect of the land/building and machinery of the company. The petitioners have made vague allegations in the writ petition questioning the sale made by the U. P. Financial Corporation in respect of the land/building and machinery of the company. In the absence of proper factual foundation, this plea raised on behalf of the petitioners cannot be considered. It is noteworthy that the said company has not been impleaded as petitioners or as respondent in the writ petition. Even otherwise, a perusal of letter dated 19.9.2001 (Annexure-1 to the writ petition) written by the U. P. Financial Corporation to the said company shows that various steps were taken by the U. P. Financial Corporation in connection with the sale of the unit of the said company. Opportunity was given to the said company to purchase the land and building of the unit for a sum of Rs. 3,75,000 as settled between the buyer and the Corporation.

10. In the circumstances, this plea raised on behalf of the petitioner cannot be accepted.

11. The fourth contention raised on behalf of the petitioner was that as the U. P. Financial Corporation had already taken possession of the unit of the company u/s 29 of the State Financial Corporation Act, 1951 in the year 1991-92, it was not open to the U. P. Financial Corporation to take proceeding against the petitioners as guarantors u/s 3 of the U. P. Public Moneys (Recovery of Dues) Act, 1972 for recovery of dues due against the company. Reliance in this regard has been placed upon the decision in Govind Prasad and Anr. v. U. P. Financial Corporation, Kanpur and Ors. 1990 AWC 627. In Govind Prasad (supra), Division Bench of the Court held as follows (Paragraphs 3 and 4 of the said A.W.C.) :

"3. The learned counsel is clearly right. We think that the Corporation could not legally and, at any rate ought not in all fairness to proceed against the petitioners while keeping the property mortgaged with them under its control. The Corporation having decided to proceed against the borrowers and having taken possession of their assets, could not turn around and proceed against the petitioners without attempting to sell the assets seized from the borrowers. It should not be forgotten that the Corporation is an instrumentality of the State. It must, therefore, at all times act reasonably and fairly. There is nothing to indicate that value of the property seized by the Corporation is less than the amount remaining due from the borrowers. The impugned action against the petitioners, is hence plainly unjust and unfair.

4. The upshot of the foregoing discussion is that so long as the property in possession of the Corporation is not sold or released by the Corporation, it would be unfair and unjust for the Financial Corporation to proceed against the petitioners. The Corporation may, therefore, either sell the properties and recover the balance from the petitioners or it may release the property and proceed against the petitioners."

12. This decision is not applicable to the present case. As per the own showing of the petitioners, U. P. Financial Corporation took over the possession of the unit of the company u/s 29 of the State Financial Corporations Act, 1951 in the year 1991-92. The sale of the land, building of the unit of the company was made in September, 2001 for sum of Rs. three lacs and seventy five thousand, and the sale of machinery, etc., of the unit of the company was made on 12.2.2002 for sum of Rs. seventy five thousands. Thus, as per own showing of the petitioners, the sale of the land/building and machinery etc., of the company has already taken place. Therefore, recovery proceeding have been taken against the petitioners as guarantors. In view of this fact, it is evident that the decision in Govind Prasad (supra) is not applicable to the present case.

13. We have differed in our opinion regarding the import of decision in Govind Prasad (supra) in our judgment delivered on 12.7.2002 in Civil Misc. Writ Petition No. 8386 of 2002, Suresh Chandra Gupta and Anr. v. Collector, Kanpur Nagar and Ors., and have referred the said case to larger Bench. In the circumstances, it would be just and proper to direct this case to be listed after final decision in Civil Misc. Writ Petition No. 8386 of 2002, Suresh Chandra Gupta and Anr. v. Collector, Kanpur Nagar and Ors.

14. The fifth contention raised on behalf of the petitioners is that the amount of loan being Rs. 27,86,250, the proceedings for recovery of such loan could be taken only in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and it was not open to the U. P. Financial Corporation to take proceedings u/s 3 of the U. P. Public Moneys (Recovery of Dues) Act, 1972 against the petitioners.

15. As regards this question also, we have differed in our opinion in our judgment delivered on 12.7.2002 in Civil Misc. Writ Petition No. 8386 of 2002, Suresh Chandra Gupta and Anr. v. Collector, Kanpur Nagar and Ors., and have referred the said case to a larger Bench. In the circumstances, it would be just and proper to direct this case to be listed after final decision in Civil Misc. Writ Petition No. 8386 of 2002, Suresh Chandra Gupta and Anr. v. Collector, Kanpur Nagar and Ors.

16. In view of the aforesaid discussion this writ petition is directed to be listed after the decision in Civil Misc Writ Petition No. 8386 of 2002, Suresh Chandra Gupta and Anr. v. Collector, Kanpur Nagar and Ors. The interim order dated 2.5.2002 is however, modified to the extent that it shall be open to the U. P. Financial Corporation to proceed against the petitioners either under the

provisions of Sections 29 31 and 32G of the State Financial Corporations Act, 1951, or under the provisions of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993.