(2007) 07 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36352 of 2007

Gulab Chand Kesari and Anr. APPELLANT

Vs

State of U.P.& Ors. RESPONDENT

Date of Decision : 08-07-2007

Acts Referred:

Citation : (2007) 07 AHC CK 0130

Hon'ble Judges : Amitava Lala, J and Shishir Kumar, J

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—The petitioners contended before this Court that they were guarantors in taking Bank loan by the respondent No. 4. Therefore in view of the ratio of the judgment reported in 2006(3) JCLR 311 (SC) : 2006 (10) ADJ 52 (SC), Ashok Mahajan v. State of U.P. & Ors., the borrower have to be dealt with first before taking any action against the guarantor.

2. We find from the aforesaid judgment that the alleged unpaid term loan amount is arising out of the Pradeshiya Industrial and Investment Corporation, Uttar Pradesh Limited (PICUP). The proceeding was initiated ultimately against the guarantor under Section 9 of the State Financial Act, 1951. The Supreme Court observed that Sections 3 and 4 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972, as referred therein, clearly speak that the authority cannot proceed against the guarantor until the property of the principal debtor is firstly sold of for the purpose of recovery of the dues. However, upon making such observation the matter was remitted back to the High Court for the purpose of reconsideration.

3. In the instant case, we find that the guarantors have filed this writ petition against a Nationalised Bank making the principal borrower as party respondent herein to stall the recovery proceeding on the aforesaid property. According to us, such ratio is distinguishable in nature in the instant case because whether the liability of the guarantor is coextensive or not, that has to be ascertained from the agreement itself. No agreement has been produced hereunder to ascertain

such facts nor we could do so in the teeth of the notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as Act), to which a reply/ representation has already been given by the petitioners under Section 13(3A) of the said Act.

4. However, at this juncture learned Counsel appearing for the petitioners fairly submitted before this Court that the petitioners are inclined to pay the dues in instalments provided breathing time is given to them to which the respondentBank agreed. Therefore, the following order is passed :

5. We direct that the respondents, their agents, servants, employees, officers etc. shall not proceed to recover the loan amount in question or proceed with attachment/auction sale etc. (subjectmatter of this writ petition) provided the petitioners make deposits as follows:

(1) Petitioners shall make an initial deposit of Rs. 1,00,000/ (Rupees one lakh only) within one month from today.

(2) Petitioners shall pay balance amount in 4 equal quarterly instalments on or before 30th of the relevant month; instalment period for computing 1st instalment shall commence from the day following the day when one month period referred in clause 1 shall end.

(3) Petitioners shall approach the respondentbank in writing, while paying 3rd instalment and on so being approached, the Bank shall furnish, within three weeks of receipt of request, detailed account statement giving full particulars indicating all past deposits and dues up to date, alongwith such documents as may be claimed by the petitioner. Petitioners may file objection within three weeks of receipt of account statement, bank shall communicate decision in three weeks of receipt of objection, if any, and the balance amount, if any, shall be deposited as 4th instalment as per direction of the Bank.

(4) Any amount already deposited under above loan account shall be duly adjusted and taken care of.

(5) In case, petitioners make payments as per schedule prescribed above and complies with all the conditions contained therein, no amount as collection charges shall be recovered.

(6) But in case petitioners commits default of any of the above conditions, this order shall stand vacated automatically on the date of default itself without further reference to the Court and the petitioner will become liable to pay collection charges also.

6. If the petitioners feel aggrieved against the calculations given in the account statement, they may seek their remedy, without being prejudiced by this order in any manner, as may be available in law.

7. Writ petition is disposed of finally on the above directions.

No order is passed as to costs.

Shishir Kumar, J. I agree.

