
(2016) 04 AHC CK 0178

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19003 of 2016

M/S Astral Cables Ltd. and Anr.

APPELLANT

Vs

State of U.P. and 3 Ors.

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ADJ 480 : (2016) 166 AIC 923 : (2016) 117 ALR 521 :
(2016) 132 RD 782 : (2016) 2 RJ 1523

Hon'ble Judges : Krishna Murari and Raghvendra Kumar, JJ.

Bench : Division Bench

Advocate : Javed Husain Khan, Gulrez Khan and W.H. Khan, Advocates, for the Appellant; C.S.C., Virendra Kumar Srivastava, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Raghvendra Kumar, J.—Heard Sri W. H. Khan, learned Senior Counsel assisted by Sri J. H. Khan, learned counsel for the petitioners, learned Standing Counsel for the State and Sri Verendra Kumar Srivastava, learned counsel for respondent no.4.

2. Petitioners have approached this Court seeking following reliefs :-

(I) Issue a writ, order or direction in the nature of mandamus commanding the respondent no.1 to 3 to refund Rs.1 lac with 18 % interest per annum which the respondent no.3 realised from the petitioner under coercion towards recovery charges in pursuance of the citation dated 13.5.2015.

(II) Issue a writ, order or direction in the nature of mandamus commanding the respondent nos.1 to 3 not to make any further recovery or demand of Rs.6 lacs as collection charges against the citation dated 13.5.2015.

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

(IV) Award costs to the petitioner from the contesting respondents."

3. Petitioner no.1 availed financial assistance from Central Government financial institution (respondent no.4) through petitioner no. 2 to a tune of Rs. 54 lacs out of which he made a payment of Rs. 12,44,700/-. Due to cancer ailment of the son of petitioner no. 2, there was default in payment of the balance loan amount. The respondent no.4 issued a recovery certificate to respondent no. 2 for the recovery of Rs. 1,18,39,269.20/- on the basis of which respondent no.3 issued a citation on 13.5.2015 for appearance on 27.5.2015 and payment. The petitioner came to know about the recovery citation and approached to the respondent no.4 for the settlement of the recovery amount. The petitioner made a request to respondent no. 4 to give some time to him to arrange money for clearing the outstanding dues and in the meantime, the recovery certificate be kept in abeyance. The respondent no. 4 issued a letter dated 18.8.2015 to respondent no. 2 to keep the recovery certificate in abeyance.

4. Pursuant to payment of settlement amount of Rs. 70 lacs by the petitioner, the respondent no. 4 issued no dues certificate to the petitioner on 1.4.2016. The petitioner was further informed that the copy of no dues certificate has also been sent to respondent no. 2. The respondent no. 4 vide letter dated 21.4.2016 made a request to the respondent no. 2 to return the recovery certificate dated 12.3.2015 since the matter was amicably settled.

5. The respondent no. 3 summoned the petitioner no. 2 and under the threat of civil imprisonment obtained a letter that he would pay 10 % of the settlement amount as recovery charges and forced petitioner no. 2 to issue a letter that he would deposit Rs. 1 lac by 22.4.2016 and petitioner no. 2, accordingly, paid Rs. 1 lac on 22.4.2016 to respondent no. 3 and remaining amount of Rs. 2.5 lacs was directed to be deposited by 30.4.2016 and for remaining Rs. 3.5 lacs after 30.4.2016.

6. It has been submitted on behalf of the petitioner that an amicable settlement of loan was arrived at between the petitioner and respondent no. 4 pursuant to which the petitioner deposited Rs.70 lacs to the full satisfaction of the loan amount with the respondent no.4. Consequently, no dues certificate was issued and a copy of the same was endorsed to the respondent no. 2. Further a request was made by respondent no.4 to the respondent no. 2 to return the recovery certificate. It has further been argued that in view of the above facts no positive steps were ever taken by the officials of respondent no.2 or 3 against the petitioner to recover the amount pursuant to the recovery citation. Hence, the demand for 10 % of the recovery charges is highly unjustified and illegal. The learned counsel for the petitioners has placed reliance upon the Full Bench decision passed by this Court in the case of Mahrajwa and others v. State of U. P. & others, 2013 (1) ADJ 426 passed in Civil Misc. Writ Petition No. 56175 of 2011 and further placed reliance on a Division Bench judgment of this Court in the case of Sona Milk Products Pvt. Ltd v. State of U. P. passed in Writ Petition No. 35765 of 2004 decided on 17.7.2014.

7. Per contra, it has been submitted by the learned Standing Counsel that since the recovery certificate was issued by respondent no. 4 to respondent no. 2, which in turn was endorsed to respondent no. 3 for taking appropriate action pursuant to the aforementioned recovery citation, hence, the petitioner is liable to pay the recovery charges.

8. Counsel for the respondent no. 4 has not opposed the prayer for refund of Rs. 1 lacs deposited by the petitioner no. 2.

9. Admittedly, the loan amount was amicably settled between the petitioners and respondent no. 4 and accordingly the payment was made and no objection certificate was issued by respondent no.4. Further a request was made to respondent no. 2 by respondent no.4 to return the recovery citation. Now the question crops up for consideration whether in the situation where no efforts were put in by the officials of respondent no. 2 and 3 for realisation of the amount shown in the recovery citation, the recovery charges are recoverable or not from the petitioner or the amount of Rs. 1 lac deposited by petitioner under threat by respondent no.3 is liable to be refunded to him.

10. To arrive at a conclusion, we feel it necessary to consider the law as propounded by the Full Bench in Mahrajwa and others v. State of U. P. & others, 2013 (1) ADJ 426 in para 28 of the judgment, which is quoted hereinunder :-

"28. From the scheme of 1890 Act, 1950 Act and 1973 Act as also 1952 Rules and 1975 Rules one thing is amply clear that while Sections 3 and 5 of 1890 Act and Rule 29 of 1975 Rules speak of the cost of recovery to be realised along with the arrears it is necessarily to be understood and restricted to where the arrears have been recovered by the concerned authorities. If the authorities have not been able to recover the amount of arrears through coercive process undertaken by them, then there is no question of realising the cost of recovery from the defaulter. The issuance of recovery certificate is a ministerial job. If no concrete further steps have been taken and the arrears have not been realised by them and instead the defaulter pays the amount of arrears directly to the creditor or to the person to whom it is due then it cannot be said by any stretch of imagination that the State authorities have recovered the amount of arrears. In that even, there is no question of realising the cost of recovery/recovery charges from the defaulter either under the 1890 Act or under the 1975 Act. The provisions of Section 3 of the 1890 Act and Rule 29 of 1975 Rules have to be read accordingly."

11. Subsequently, a Division Bench of this Court in the case of Sona Milk Products Pvt. Ltd v. State of U. P. passed in Writ Petition No.35765 of 2004 placing reliance upon the above Full Bench judgment passed orders on 17.7.2014 and observed as follows :

"We find that in the facts and circumstances of the present case no amount towards collection charges became due from the petitioner for being paid to the respondent-State. Admittedly, the entire dues got settled by resorting to OTS scheme, in which dues of the Corporation were directly paid by the petitioner to

the Corporation. No amount was coercively realised by the state authorities nor any details of actual expenditure incurred by them have been furnished. The collection charges, in such circumstances, could not be demanded in view of the provisions of applicable law, which have been discussed in Mahrajwa and others (supra)."

12. From the propositions of law referred above it can safely be discerned that recovery charges as claimed by respondent no. 3 are not recoverable in view of the fact that no positive efforts were made by the officials of the State to realise or recover the amount mentioned in the recovery citation nor any steps were taken nor any expenditure was incurred by the respondents towards the recovery of the amount shown in the recovery citation.

13. The petitioner entered into a compromise with respondent no. 4 and paid the entire amount as settled between them to the satisfaction of respondent no. 4 whereupon the respondent no. 4 issued no dues certificate and a request was made to respondent no. 2 to refund the recovery citation.

14. It is noticeable in the instant case that earlier the recovery citation was requested to be kept in abeyance by respondent no.4 and lastly the request was made to return the recovery citation which clearly establishes that without putting any positive efforts by respondent no. 1, 2, 3 the amount of loan was satisfied by the petitioner, as such, in view of the above proposition of law respondent no. 1, 2, 3 are not entitled to recover the recovery charges of the amount shown in the recovery citation.

15. In view of the aforesaid discussions, we are of the considered opinion that the petitioners are entitled for the refund of the amount which has been deposited by him under threat of civil imprisonment and the respondent no.1, 2, 3 are not entitled to recover any amount from the petitioner as recovery charges.

16. The petition thus, deserves to be allowed. Accordingly, this writ petition is allowed. Respondent nos. 1, 2, 3 are directed to refund the amount of Rs. 1 lac to the petitioners within a month from the date of this order. Respondent no. 1, 2 and 3 are further commanded not to realise any amount from the petitioner towards recovery charges.

17. With the aforesaid observations/directions, this writ petition stands allowed.