

(1996) 12 AHC CK 0042
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petns. No"s. 2660 of 1995 and 5256 of 1996

M/s. Brij Mohan Rice Mill and others

APPELLANT

Vs

Regional Manager, Uttar Pradesh Financial Corporation and
another

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 1, 14, 2
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 35
Constitution of India, 1950 — Article 225, 226
Uttar Pradesh Financial Corporation Act, 1951 — Section 29

Citation : AIR 1997 All 291 : (1996) AWC 1458

Hon'ble Judges : R.K. Mahajan, J;B.M. Lal, J

Bench : Division Bench

Advocate : R.N. Sharma, for the Appellant; Pradeep Kumar and Standing
Counsel, for the Respondent

Judgement

B.M. Lal, J.—Both these petitions being based on the similar facts and law are being disposed of by this common judgment.

2. "M/s. Brij Mohan Rice Mill (hereinafter referred to as the Unit) is a partnership firm registered under the Partnership Act. Sri Cyan Singh son of Sri Kandhai Lal, Prem Singh son of Sri Brij Mohan, Smt. Indira Devi wife of Sri Brij Mohan and Smt. Pan Kumari daughter of Sri Manohar Singh are partners of the unit.

It appears that the Unit was sanctioned a loan of Rs. 14-50 lacs on 2-4-1988 by the U.P. Financial Corporation (for short the Corporation) but later on it was cancelled by the Managing Director of the Corporation on 14-9-1988. Thereafter by order dated 27-2-1991 the Managing Director revived the loan and ultimately on 13-8-1991 agreement was executed between the parties. As per the terms and conditions of agreement the loan amount does not seem to have been paid to the Corporation, therefore, the Corporation issued notice dated 12-8-94 under S. 29 of U.P. Financial Corporation Act. However, petitioner made certain deposits

towards the loan but entire amount due was not paid to the Corporation as per the terms and conditions of the agreement. Ultimately for recovery of loan auction proceedings have been initiated against the unit. Hence these petitions.

3. Learned counsel for the respondent Corporation raised preliminary objection that these petitions as framed and filed are not maintainable in as much as in the matter of grant and recovery of aforesaid loan petitioner has filed as many as four writ petitions concealing the fact of filing previous petition in the subsequent petitions and left no stone unturned to get desired orders from this Court on one pretext or the other, in one petition or the other, through one counsel or the other which amounts to bench hunting tactics.

4. Learned counsel for the Corporation further contended that writ jurisdiction of this Court is a discretionary jurisdiction and since the petitioner has not approached this Court with clean hands hence he does not deserve the exercise of discretion in his favour and therefore, writ petitions are liable to be dismissed.

Learned counsel for the petitioner contended that different writ petitions have been filed for different reliefs at different stages in accordance with the Rules of the Court therefore, writ petitions are maintainable.

5. Learned counsel further contended that since entire loan amount sanctioned to the petitioner was not paid to the unit hence the unit is not liable to repay the entire amount shown to be due against it and therefore, entire recovery proceedings including auction of the unit are without any authority of law and consequently are liable to be quashed.

6. We have sent for the record of all the writ petition filed by the petitioner in the matter of grant and recovery of the loan in question and perused the same.

7. Here it may be made clear that petition filed by any of the partners for and on behalf of the partnership firm is to be deemed to have been filed by the firm irrespective of the fact that once the petition is filed by partner A and then B and thereafter by C, if partners A.B. and Care partners till the date of filing of petition. Petitioner first filed writ petition No. 12517 of 1992, M/s. Brij Mohan Rice Mill v. Regional Manager U.P.F.C., thereafter filed writ petition No. 2660 of 1995, M/ s Brij Mohan Rice Mill v. Regional Manager UPFC, then filed third writ petition No. 37850 of 1995, Prem Singh (Partner of the Finn) v. Regional Manager UPFC and thereafter filed 4th writ petition No. 5286 of 1996, Gyan Singh (Partner of the Firm) v. Regional Manager UPFC, in the same matter of grant and recovery of loan by the Corporation.

8. It is relevant to mention that first three petitions have been filed through Sri R.N.Sharma, same counsel for the petitioner whereas fourth petition is filed through Sri Satya Prakash, learned counsel. In the first petition no relief appears to have been granted in favour of petitioner. Then he filed second writ petition without giving reference of first writ petition. Thereafter filed third writ petition without giving any reference of previous two petitions. Then petitioner got first

writ petition dismissed as withdrawn on 29-1-1996 and the third writ petition was disposed of finally by order dated 21-12-95 with a direction to decide petitioner's representation. Then filed 4th writ petition, through an other counsel Sri Satya Prakash.

9. It may be mentioned here that the matter in issue in all the four petitions referred to above is grant and recovery of loan by the Corporation in one shape or the other. The contesting parties in all the four petitions are the unit on one side and the Corporation on the other side.

10. It is a matter of common knowledge that these days it has become very difficult to attach finally in the litigation. The writ courts have been applying the principle of res judicata for the purpose of achieving finality in litigation. Their Lordships of apex Court have developed the principle of res judicata and have ruled that it could not be said that the earlier judgment would not operate as res judicata as one of the grounds taken in the subsequent petition was conspicuous by its absence in the earlier petition. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. See *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*,

11. This High Court has also taken care of such situations while framing Rules of the Court. Chapter XXII, Rule 7 of the Rules of the Court reads as under :

"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."

Thus, Rules of the Court also do not permit filing of successive writ petitions on the same facts. Despite that it appears that the tendency of filing successive writ petition is continuing in this Court since long. Similar situation was faced by a learned single Judge of (his Court in *B. S. M. Samiti Roorkee v. D. M. Hardwar* (1995) 2 UPLBEC 1182 where this Court observed as follows :

"I would like to make certain comments about the filing of the successive writ petitions by the petitioner and the respondents about the same . controversy and dispute before this Court. Eleven writ petitions have been filed by the petitioners and the respondents which has unnecessarily burdened the record and consumed time unnecessarily. The petitioners could have conveniently sought for amendment in the writ petition when he was aggrieved by subsequent orders and directions."

12. In exactly similar circumstances a Division Bench of (his Court in *M/s. Munna Industries v. State of U.P.* 1994 All U 1116 observed as follows (para 20)

"The filing of successive writ petitions for same cause of action or with additional

cause of action arising during the pendency of the earlier writ petition gives rise to multiplicity of writ petitions and the multiplicity of the interim orders obtained by the parties also create problems before the respondents many a time. It is well known that as subsequent order which is said to be a subsequent cause of action needs no filing of fresh writ petition but by seeking appropriate amendment in the pending writ petition, such relief which may be needed in respect of subsequent order could easily be incorporated in the pending writ petition. This is not done and successive writ petitions are filed which is adding to accumulations of number of writ petitions before High Court."

13. Similarly another Division Bench of this Court in *Anand Kumar Gupta v. State of U.P.* (1993) 1 UPLBEC 165 held that the legal position is settled that if a writ petition is disposed of by a speaking order second petition on the same facts and cause of action would not lie. not even on a new grounds which could or ought to have been raised in the earlier petition. The Division Bench dismissed the subsequent writ petition as not maintainable during pendency of previous writ petition holding that so long previous writ petition was pending, petitioner ought/ could have challenged the validity of the Rule in the previous petition itself and it was not permissible for the petitioner to challenge the same in fresh writ petition filed subsequently.

14. We have again gone through the Rules of the Court. We find that this Court by Notification No.276/VIII-C-2 dated 4th July, 1989, published in U.P. Gazette Part II, dated 26th August, 1989 inserted specific provision under Chapter XXII Rule 2 which reads 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 thereon."

15. 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.

16. In the instant case Sri G. N. Verma, learned senior counsel appeared to defend the actions of Sri R. N. Sharma, learned counsel for the petitioner who

filed first three successive writ petitions of present petitioner without disclosing the fact of filing previous petitions, and tried to persuade this Court but later on realising the correct legal position and broader responsibility of lawyer to give correct legal advice to the client, he appears to have given proper advice to Sri Sharma. Sri Sharma tendered unqualified apology for the slackness if any on his part in the matter. Thus, this Court dropped the idea to take any further action consequent upon concealment of material fact and filing of false affidavit. But that is not all.

17. By now it is well known to all that one of the burning problems being faced by the Judiciary all over India is the problem of mounting arrears of cases in the Courts. The High Court of Judicature at Allahabad is the topper in the list. If justice delayed is justice denied then the institution is now not in a position to do justice with all on account of growing pendency. This bleeding reality cannot be ignored. If ignored, in times to come, the Institution itself will have to face the functional crisis. Even today, this Court being Court of record is not having enough place to keep the record. The employees concerned are not getting proper place to sit and maintain the record and work smoothly, with the result when the cases are ordered to be listed, they are not being listed on the dates fixed, if the cases are listed the records are not traceable, if the records are traceable the order sheets and records are not properly maintained. That apart, a number of cases in which one or the other party is suffering great injustice and irreparable loss, are not being listed and if listed are not being taken up due to paucity of time. It appears that the pain of litigants in this Court cannot be expressed in words. Its true taste is known to only those who are facing it.

18. Under these circumstances it is the need of hour that all concerned including the members of Bar and Bench must rise to the occasion and must do their level best to project the Institution at this juncture.

19. It is being seen that once petition is taken up by a Bench and no desired order is passed, either the same petition is got listed before some other Bench or during pendency of the first petition or even after disposal of the first petition, second, writ petition is filed before some other Bench and even then if not desired order is passed then in the same fashion third petition is filed and this process continues till the desired order is not passed. This is extremely bad, and highly objectionable and it must be stopped immediately.

20. Their Lordships of apex Court in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, observed that the principle underlying Rule I of Order XXII of the Code should be extended to the case of withdrawal of writ petition also in the interest of administration of justice, not on the ground of res judicata but on the grounds of public policy..... It would also discourage the litigant from indulging in bench-hunting tactics.

21. With profound respect, we may mention that for the bench-hunting tactics, concerned members of Bar alone are not responsible, we also cannot be

absolved of the responsibility, if we entertain, hear and pass orders in such cases without ascertaining as to whether at that particular point of time we were having jurisdiction to decide that particular subject matter. The jurisdiction to decide particular subject matter on particular date is conferred on each Judge by Hon"ble the Chief Justice under the Rules of the Court.

22. In this record it is relevant to mention here that in exercise of powers in grained under Article 225 of the Constitution of India and all other powers enabling it in that behalf, the High Court of Judicature at Allahabad has conferred its powers of constitution of Benches, on Hon"ble the Chief Justice vide Chapter V, Rule 1 of the Rules of the Court which provides that the Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

23. The High Court has a number of Judges. It is, therefore not practicable that all the Judges should hear every case that comes up before the Court. Thus, any function which is directed to be performed by the High Court of Judicature in the exercise of its original or appellate jurisdiction may be performed by any Judge or any Division Court thereof, appointed or constituted for such purpose. Therefore, to maintain uniformity, and regulate functioning of the Courts, elaborate procedure is prescribed under the Rules of the Court. The subject matter to be decided by the respective Benches on particular dates is to be allotted by Hon"ble the Chief Justice under Rule I of Chapter V of Rules of Court.

24. If under the Rules of the Court, the jurisdiction to decide particular subject matter is conferred on a particular Bench by the Chief Justice for a particular period and that subject matter during that period is decided by some other Bench without the case being partly heard or tied up to that Bench a decision would be without jurisdiction and consequently a nullity as lack of jurisdiction or competence renders the judgment a nullity. Similarly if, as per Rules of the Court, the jurisdiction to decide particular subject matter is conferred on a Division Bench and the same is decided by a Bench of single Judge, such a decision would also be without jurisdiction and therefore, a nullity. The provisions of Chapter V of the Rules of the Court which deal with the jurisdiction of Judges sitting alone or in Division Courts, are imperative in nature. Rule 1 Chapter V provides that the Judges shall sit alone or in such Division Courts as may be constituted by order of the Chief Justice or in accordance with his directions. Therefore, it is not the prerogative of the Judges to sit alone or in Division Courts rather it is the sole prerogative of the Chief Justice as to which Judge shall sit alone and which shall sit in Division Court. Similarly it is not the prerogative of Judges as to what work they shall do or which subject matter they shall decide rather it is the sole prerogative of the Chief Justice to assign the subject matter to the Judges and the Judges shall do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions. However, under Rule 14 of Chapter V, partly heard and tied up cases shall ordinarily be laid before

the same Bench for disposal. Therefore, despite allocation of different subject matter to the Judges by the Chief Justice part heard and tied up cases shall be ordinarily laid before the same Bench. Indeed, if any part heard case cannot be heard for more than two months on account of absence of any Judge or Judges constituting the Bench, the Chief Justice may order such pan-heard case to be laid before any other Judge or Judges to be heard afresh.

25. Thus, constitution of Benches or nomination of Judges and allocation of work to the Judges is prerogative of Chief Justice only and the same is not liable to be interfered with.

26. Our conclusions aforesaid based on true import of imperative provisions of Chapter V of the Rules of the Court framed by High Court of Judicature at Allahabad in exercise of powers conferred by Article 225 of the Constitution of India, also stand supported by a decision of Apex Court in Pandurang and Others Vs. State of Maharashtra, where Their Lordships of Apex Court have ruled as under :

"What can be done only by at least two Judges cannot be done by one Judge- Even if the decision is right on merits, it is by a forum which is lacking competence with regard to the subject matter. Even a "right" decision by a wrong "forum" is no decision. It is non-existent in the eye of law. And hence a nullity.

27. Their Lordships have also ruled in para 4 of the judgment as follows :

"When a matter required to be decided by a Division Bench of the High Court, is decided by a learned single Judge, the judgment would be a nullity, the matter having been heard by a Court which has no competence to hear the matter, it being a matter of total lack of jurisdiction. The accused was entitled to be heard by at least two learned Judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of two learned Judges. This right cannot be taken away except by amending the Rules (Rules of the Court). So long as the Rules are in operation, it would be arbitrary and discriminatory to deny him his right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules."

28. Similar view has been taken by Apex Court in State of Madhya Pradesh Vs. Dewadas and Others, .

29. A germane question, surfacing in this Court is that many Judges of different High Courts have been transferred to this Court and naturally they are accustomed to the practice and Rules of the respective High Courts from which they have come and impression of those practices and Rules often come in their mind. In this regard we may point out that under Article 225 of the Constitution, every High Court has power to frame Rules for regulating the proceedings of the

Court. As stated above. High Court of Judicature at Allahabad has framed Rules of the Court accordingly, therefore, proceedings of this Court are to be regulated by the Rules of this Court and not of any other High Court. That apart, Allahabad High Court is one of the oldest High Courts of India and is the biggest High Court of Asia. It is known for its glorious achievements and traditions. It has not only rich traditional heritage, its precedents even on judicial side are respectively followed by other High Courts and also by the Apex Court. Therefore, it is manifest to preserve its old traditions.

30. In the case of *M/s. Munna Industries* 1994 All LJ 1116) (supra) a Division Bench of this Court observed that the provisions of Chapter 22, Rule 7 of the High Court Rules, no doubt provides that no second application on the same facts, where an application has been rejected, shall be entertained on the same facts but this Rule does not cover the situation arising presently in large number of writ petitions, therefore the Division Bench considered it necessary and appropriate the amendments in Chapter 22 of the High Court Rules were required whereby a petitioner may be required to categorically state in the first paragraph of the writ petition that no earlier writ petition in the same matter or arising out of the same matter is pending or decided before this Court. If such statement is made by the petitioner in the writ petition multiplicity of the writ petitions by the same parties could be avoided and for subsequent orders, if any, passed required requiring a relief by the petitioner could be added in the writ petition itself by seeking appropriate amendments. Thus, that Division Bench had requested that Hon'ble the Chief Justice may get suitable amendments made in Chapter 22 of the High Court Rules incorporating the suggested provisions. But it appears to us that the High Court Rules have not been amended so far.

31. We further feel that above quoted newly inserted provisions under Chapter XXII, Rule 2 of the Rules of the Court also are not being adhered to whereby every petitioner is required to state whether he, in any capacity whatsoever has filed any previous petition on the same facts and, if so, the orders passed thereon. Therefore, we further, direct the Registrar for strict enforcement of the said provisions of Chapter XXII, Rule 2 by instructing the Stamp Reporter to make Specific report on each and every petition as to whether the petitioner has made specific statement with regard to filing of previous petition and also by instructing the Bench Secretaries to point out to respective Courts immediately after calling out the case, about the Stamp Reporters report in this regard.

32. We are very much pained to see that observations of this Court in judicial orders are being taken very lightly. Despite repeated observations by different Benches of this Court in successive decisions for deprecating the filing of successive petitions in the same matter, the practice prevalent is being continued and successive petitions are being filed continuously in the same matters. In Writ Petition No. Nil of 1994, *Kamla Kant Misra v. The Managing Director*, decided on 30th May, 1994 one of us (B.M. Lal, J,) observed as under :

"Thus this Court is constrained to observe that the growing tendency of filing

petitions after petitions for the same relief concealing material facts deserves to be reprimanded at this juncture and it is not proper on the part of the counsel to encourage this tendency. Counsel are also part and officers of the Court therefore such things are not expected of them also."

33. 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 Us 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.

34. It is well settled that if cognizance of a matter cognizable by Division Bench is taken by the single Judge, the order so passed would render nullity. Recently Their Lordships of Apex Court in *Inder Mani v. Mathehwari Prasad* (1993) 9 JT (SC) 135 ruled that it is the prerogative of Hon'ble the Chief Justice to constitute the Benches and to allocate work to such Benches. Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench.

35. Thus, if a particular subject matter is allocated to a particular Bench, the same must be heard and decided by that particular Bench and not by any other Bench and therefore if cognizance of any matter is taken by a Bench to which matter is not allocated by Hon'ble the Chief Justice, the order passed by that Bench would render nullity. Similarly, even if by inadvertence or ignorance a case is listed before a Bench to which that subject matter is not allocated by Hon'ble the Chief Justice, the order passed by that Bench would render nullity and therefore, in such matters the onerous duty cast upon the learned counsel for respective parties is to bring the correct position to the notice of the Bench that that subject matter is not allocated to that Bench by Hon'ble the Chief Justice. Even in urgent matters if request is made to the Court for early hearing the Court having jurisdiction to hear and decide the case by virtue of the nomination or constitution of Benches can alone send for the case and none else.

36. Since petitions after petitions have been filed without disclosing the same in subsequent petition in suppression, therefore, all the petitions are dismissed with costs. The Court assesses the costs to the tune of Rs. 10,000/- each, and the same shall be recoverable from the petitioners as arrears of land revenue if not deposited voluntarily by them within two months. The District Magistrate, Agra shall proceed in accordance with law to recover the same.

37. With this direction both the petitions fail and are dismissed. Interim order dated 1-2-95 is vacated. Copy of this judgment be sent to the District Magistrate, Agra.

38. Petitions dismissed.