
(2015) 08 AHC CK 0111
In the Allahabad High Court
Case No : Writ C. No. 45300 of 2015

Munney Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 226

Citation : (2015) 8 ADJ 517 : (2015) 5 ALJ 546 : (2016) 114 ALR 41 : (2015) 6 AWC 6335

Hon'ble Judges : Rakesh Tiwari and V.K. Birla, JJ.

Bench : Division Bench

Advocate : Vishnu Sahai and B. Dayal, for the Appellant; A.S. Rana, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner as well as learned Standing Counsel appearing for the State respondents and Sri. A.S. Rana, learned counsel for the respondent Nos. 1 to 3-U.P. Awas Evam Vikas Parishad, Lucknow (hereinafter referred as to the "Parishad") and have perused the record. The petitioner, being the highest bidder, was allotted a piece of commercial land measuring 1250 sq. metre and the total bid price of the said land was calculated to Rs. 5,63,76,250/-. The said amount was required to be deposited in installments as narrated in paragraphs 6 and 7 of the petition. The petitioner was delivered possession of the said land on 11.5.2010. The petitioner also received letter of acceptance on 29.9.2012, which contained certain conditions regarding constructions to be raised by the petitioner. The total amount paid from 15.2.2008 to 10.9.2012 has been shown in the chart (filed as Annexure 5 to the petition), which indicates that a sum of Rs. 2,93,07,065/- was deposited by the petitioner till 10.9.2012.

2. It has been stated in various paragraphs that due to great financial distress in

the market and the valuation of property has come down, the petitioner suffered huge financial losses and could not make regular payment. As such, the default in making payment is admitted by the petitioner. Consequently, a recovery certificate dated 31.3.2015 (Annexure 7 to the petition) was issued by the respondent-Parishad for recovery of total sum of Rs. 10,48,12,582/-, out of which a sum of Rs. 7,27,14,630/- was towards the installments due and Rs. 3,20,97,952/- was towards the penal interest. It may also be noticed that subsequently another letter/reminder dated 28.5.20015 in relation to the several defaulters including the petitioner was issued, which is annexure 6 to the accompanying Writ Petition (C) No. 45298 of 2015 (M/s. Uttaranchal Buildcon Pvt. Ltd. & Another v. State of U.P. and 4 others) wherein the present petitioner-Munney Khan is petitioner No. 2. In paragraph 28 of the petition, it has been submitted that the petitioner is ready and willing to make the payment due from him provided the interest is calculated at the rate of 18% and that he is further ready and willing to make payment in installments.

3. The challenge to the amount recoverable has been raised on the ground that the respondent-Parishad cannot recover penal interest at the rate of 24% from the petitioner and actual amount with interest at the rate of 18% only is chargeable and the petitioner is liable to make payment only at the maximum rate of 18%. In support of his contention, learned counsel for the petitioner has placed reliance on the various interim orders passed by this Court and has also placed reliance on a judgment of Hon"ble Apex Court rendered by a Constitution Bench of Five Judges in the case of Central Bank of India Vs. Ravindra and Others, to dispute the levy of 24% penal interest. At the same time, the prayer for fixing the easy installments, for repayment of loan as is being sought to be recovered from the petitioner for which a recovery certificate has been issued by the respondent-Parishad, has also been made.

4. A perusal of the judgment in the case of Central Bank of India Vs. Ravindra and Others, indicates that the said judgment is in respect of interpretation of provisions of Section 34 of Civil Procedure Code wherein basically the powers of Civil Court regarding awarding of interest was under interpretation. Predominantly, the question before Hon"ble Apex Court was regarding the interest calculated, which was charged by the Banking Company and paragraph 1 of the said judgment is noted in this regard, which is quoted as under:--

"What is the meaning to be assigned to the phrases "the principal sum adjudged" and "such principal sum" as occurring in S. 34 of the Code of Civil Procedure, 1908 (as amended by the Code of Civil Procedure (Amendment) Act (66 of 1956) w.e.f. 1-1-1957), a question of frequent recurrence and having far reaching implications in suits for recovery of money, specially those filed by banking institutions against their borrowers, has been referred by a three-Judges Bench of this Court to the Constitution Bench."

5. In the present case, the admitted default committed by the petitioner in making payment of installments to the respondent-Parishad towards the price of

commercial land purchased by him in an auction is under question and the terms of letter of allotment are categorical in nature in this regard. The letter of allotment dated 11.4.2008 (Annexure 1 to the petition) clearly indicates that the interest payable is 18% and in case of default 24% additional interest is payable.

6. In such view of the matter, once now the petitioner is disputing the terms of the contract regarding levy of penal interest at the rate of 24%, the proper remedy available to him is under the common civil law and we would not be inclined to entertain the present petition under Article 226 of the Constitution of India.

7. Although it has been claimed in the petition that the recovery in question cannot be made under Section 91 of the Uttar Pradesh Awas Evam Vikas Adhiniyam, 1965 and the amount cannot be recovered as arrears of land revenue and for this purpose, recovery certificate cannot be issued by the respondent-Parishad, however, this ground was not pressed. Even otherwise, once the petitioner has shown his willingness that he is ready and willing to deposit the amount due provided the interest is calculated at the rate of 18% and penal interest at the rate of 24% may not be charged, we would not be inclined to go into any such question.

8. In view of the stand taken by the petitioner disputing the amount claimed by the respondent-Parishad under the contract and seeking relief of easy installments on his own terms, leaves the undertaking of the petitioner that he is ready and willing to deposit the amount redundant and, therefore, the same cannot be granted to the petitioner.

9. For the discussions made hereinabove,, the present petition lacks merit and is accordingly dismissed leaving it open to the petitioner to avail proper regular civil remedy, if so advised. However, we make it clear that in case the petitioner avails any such remedy, the same shall be decided by the Court/Forum/Authority without being influenced by any observation made hereinabove. There shall be no order as to costs.