

(2019) 05 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1690 Of 2018

Pooran Sharma

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0031

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : H.C. Lohani, K.N. Joshi, Siddhartha Sah

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The respondent No. 5 had filed a short counter affidavit along with the Delay Condonation Application (CLMA No.12470 of 2018) seeking a

condonation of 31 days which has chanced in filing the short counter affidavit. The Delay Condonation Application is not seriously opposed by the

petitioner's counsel, hence the delay which has chanced in filing the short counter affidavit would stand condoned, consequently, the Delay

Condonation Application No.12470 of 2018 is allowed. Counter affidavit filed on behalf of respondent No.5 is taken on record.

2. The petitioner before this Court admittedly is the proprietor of M/s. Himalaya Holiday Home and for the purpose of availing the financial assistance,

he had taken a loan from District Industrial Centre, Almora which according to him stood sanctioned in his favour on 4.02.2008, to the tune of

Rs.12.00 lakhs. Thereafter, in accordance with the pleadings raised in the writ petition, the petitioner was expected to repay the loan within a period of

10 years as pleaded in the writ petition and EMI of the said loan was fixed as Rs.18,000/- per month.

3. The petitioner had come in the present writ petition with the case that after the sanctioned of the said loan, he had been consistently paying the

installments due and the total payment which he has contended to have been made with the respondent by him till the institution the writ petition was

Rs.18,48,823/-. He has pleaded before this Court that he was entitled for certain subsidy to be paid by respondent No.4 under the scheme but the said

subsidy was not given to the petitioner, Consequently, the impugned recovery citation which has been issued for recovering the total amount of

Rs.7,78,684/- is arbitrary as according to the petitioner's case no amount fell due to be paid because he has already paid an excess amount and

besides that he has not been provided with the benefit of the subsidy which according to him he was entitled to receive as per the scheme.

4. This Court initially granted an interim order in favour of the petitioner, Co-ordinate bench of this Court vide its order dated 19.06.2018, was passed

on the ground that the petitioner, since has pleaded that he was suffering from certain financial crises and considering the fact that as he has already

paid a sum of Rs.18,48,823/-which is an amount much above the actual loan which was taken by him in the year 2008. Consequently, the action in

pursuance to the recovery citation was kept in abeyance. After issuance of the notice, the respondents had filed their counter affidavits. In the

argument which has been extended by learned counsel for the respondents is that in the statement which has been submitted by the petitioner as a

document before this Court and particularly the entries made on 02nd April, 2015 showing the amount of Rs.3,67,420/-, it is not clear that the amount

relates to what subject, because there is an erasing fluid which has been used on the head under which the said amount is said to have been adjusted.

Furthermore, if subsequent entries is also taken into consideration rather it shows that the interest on subsidy was being granted to the petitioner and

as would be apparent from entry of the same day i.e. very next entry of the same date, which shows that interest on subsidy for March,2015 was

credit in the account of the petitioner.

3. Be that as it may another argument which has been extended by learned counsel for the petitioner is that as per correspondence which has been

made by the District Industrial Centre, Almora to the Branch Manager of Canara Bank in para No.3, the following pleadings have been raised.

â??3. 22 2016 (

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4. For the purpose of claiming the benefit of interest subsidy, the petitioner has already preferred a suit i.e. being Suit No.22 of 2016 before Civil Judge

(Sr. Div.), Ramnagar District Nainital, which is pending. In the writ petition in question there is not even a single whisper in the pleadings raised by the

petitioner pertaining to the institution of said suit and its pendency for availing the benefit of interest on subsidy which has been simultaneously prayed

for in the writ petition too. In such an eventuality where a litigant invokes the extra ordinary writ jurisdiction of this Court under Article 226 of the

Constitution of India, for exercising its extra ordinary jurisdiction, it is not a Court of evidence where the High Court is expected to appreciate and

anticipate the evidence, until and unless the same is brought on record by the party concerned who is approaching the High Court.

5. If a material fact is concealed and not brought to the knowledge of the Court and an order is obtained, it would amount that the litigant has not come

up with clean hands for seeking the remedy or for seeking the relief as claimed in the writ petition. This Court is of the considered view that such type

of litigant should not at all be given liberty or any relief, if they do not disclose the correct and true facts in the writ petition and they mislead the Court

by concealing the fact and getting the interim order. Even otherwise on considering the argument which has been extended by learned counsel for the

respondent-Bank, it is that the financial assistance which was extended to the petitioner way back in 2008, was disbursed and sanctioned under State

Sponsored Scheme and any default made by petitioner is remittance of the amount would be recoverable as arrears of land revenue in accordance to

the provisions of U.P. Public Money Recovery of Dues Act,1972, because the same would be applicable.

6. In that view of the matter and particularly on the ground that the petitioner has not come up with clean hands before this Court and has concealed a

material fact of institution of prior suit being Suit No.22 of 2016 for the same relief, this writ petition is dismissed with cost of Rs.10,000/- to be

deposited in the High Court Advocate Welfare Fund within a period of six weeks

from today.