

(1999) 01 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3506 of 1999

Rafeeq Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3

Citation : AIR 1999 All 272 : (2002) 111 CompCas 761

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : Shailendra Prakash, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, Rafeeq Ahmad, borrowed money from the Bank of Baroda, branch Mooratganj, District Kaushambi. In the writ petition no details have been given on when exactly the loan was taken and the amount taken against the loan. A perusal of the writ petition itself reveals that the petitioner had no intention to return the loan. The record speaks for itself that in 1984 respondent No. 3, Manager, Bank of Baroda, branch Mooratganj, District Kaushambi, filed suit No. 40 of 1984 before the Additional Civil Judge, Allahabad. The suit was decreed by the VIII Additional Chief Judicial Magistrate, Allahabad. The ex-parte decree against the petitioner is dated 12-1-1995. The suit was decreed for a sum of Rs. 42,240.95. The Execution case was numbered as case No. 3 of 1996. The execution of the decree was put in motion. The petitioner has knowledge of it as he has appended papers relating to the execution of the decree along with this petition. Yet, the petitioner would not discharge the loan nor satisfied the decree on the suit which has been decreed. As if this was not enough to bring the litigation to an end, the petitioner was avoiding satisfaction of the decree arisen out of the suit proceedings by which the judgment was against the petitioner relating to the loan taken from the Bank. Finding that the petitioner was not

coming forward to satisfy the decree, the Bank took recourse to the recovery proceedings in the U. P. Public Money (Recovery of Dues) Act, 1972, Now the petitioner contends that by law, the amount which was loaned by the Bank to the petitioner, in which the bank has been successful in adjudication with a judgment against the petitioner and the execution proceedings facing him also, which yet the petitioner would not succumb to, the amount cannot be realised in distress proceedings as arrears of the land revenue.

2. This Court is of the opinion that the petitioner has no respect for the law nor of the proceedings in Court. As the slightest opportunity the petitioner makes as issue of resisting the proceedings of recovery of the loan which he admittedly has taken. The petitioner does not deny that no loan was taken but the petitioner denies the proceedings in Court in which the judgment against him was rendered ex parte. The petitioner evades the execution proceedings by which the decretal amount is being recovered through the Court process which if deposited would frustrate the recovery proceedings to reprieve the amount under loan. This includes frustrating the judgment and decree both. The petitioner seeks equity from the High Court that on technicalities of the law he should be protected that the amount should not be recovered from him as arrears of land revenue.

3. Persons, like the petitioner, must not be permitted to play with the procedures of law. Throughout the petitioner's conduct has been inequitable. The petitioner does not discharge his debt and seeks protection of the law to avoid payment of a loan. The petitioner ought not be shown any indulgence by the High Court in its prerogative writ jurisdiction. This is a fit case for recovering the debt, in the manner in which it is being recovered. The amount due to the Bank needs to be collected as a public debt.