(2012) 02 AHC CK 0299

In the Allahabad High Court

Case No : Special Appeal No. 245 of 2012

Ram Jeet — APPELLANT

Vs

State Of U.P. and Others — RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Citation : (2012) 2 ADJ 497

Hon'ble Judges : Syed Rafat Alam, C.J;Ran Vijai Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This intra Court appeal under the Rules of the Court arises from the judgment and order of the learned Single Judge dated 2.1.2012 passed in Writ Petition No. 75771 of 2011 whereby the writ petition preferred by the appellant against the impugned recovery certificate issued in the year 2010, a copy whereof is Annexure-7 to the writ petition, is dismissed. It appears that the appellant-Ram Jeet, his father Ram Dawar Yadav and other family members took loan on 27.3.1997 from the respondent-Union Bank of India for purchase of a Tractor. However, when the appellant committed default in payment of installments, the Bank initiated recovery proceeding and consequently a recovery certificate was issued in the year 2001. Aggrieved, the appellant preferred the aforesaid writ petition, which has been dismissed by the learned Single Judge vide order under appeal. Hence this appeal.

2. Learned counsel for the appellant contended that the installments have been paid by the appellant and the amount shown in the recovery certificate is inflated and the payment made by the appellant has not been adjusted. He also submitted that against the impugned recovery notice, the appellant filed a detailed objection before the Recovery Officer/Tehsildar, respondent No. 3. However, the Recovery Officer without disposing of the objection, adopted coercive steps for recovery of the amount. He further submits that several installments were deposited but those deposits have not been entered in his

Passbook, nor it has been taken into consideration while issuing the recovery certificate.

3. Learned counsel for the appellant further relying upon a judgment of the Apex Court rendered in the case of Seth Banarsi Dass (Dead) by LRs Vs. District Magistrate and Collector, Meerut and others, , urged that the Recovery Officer acts as an Executing Court, and therefore, the objection filed against such recovery was bound to be decided before proceeding for recovery.

4. On the other hand, learned Standing Counsel appearing for respondent Nos. 1 to 3 and Sri Arun Sharma, learned counsel holding brief of Sri B.N. Singh, learned counsel appearing for the respondent-Bank submitted that the objection of the appellant before respondent No. 3- Recovery Officer, by now, might have been decided. However, in the rejoinder-affidavit, the appellant has asserted that the objection is still pending disposal before respondent No. 3.

5. We have considered the submissions. It is not in dispute that the loan was disbursed to the appellant alongwith his father and other family members. It is also not in dispute that certain amount, which was required to be deposited in installments against the loan, have not been deposited, and thus, the appellant has committed default in payment of installments as per the agreement. The contention that he has deposited a substantial amount against the loan of Rs. 1,75,000/- alongwith interest accrued also has not been substantiated by bringing cogent evidence on record. A photo-copy of the Passbook though has been enclosed as Annexure-2 but the learned counsel submits that various deposits have not been entered in the Passbook. Receipts enclosed as Annexure-3 are in respect of deposit of Rs. 17,000/- on 30.10.2007 and Rs. 7000/- on 12.2.2008. Thus, there is no evidence showing deposit of installments except the aforesaid two receipts. However, we find force in the submission that the objection filed before the Recovery Officer requires to be decided as has been held by the Apex Court in the case of Seth Banarsi Dass (supra) wherein it has been held that in the matter of recovery, the Recovery Officer acts as an Executing Court, and has the power to traverse upon any question going to the root of liability as also jurisdiction.

6. In the case in hand, since the objection filed by the appellant is still pending before the Recovery Officer-respondent No. 3, we are of the view that no purpose would be served in keeping the matter pending further in this Court. It would, therefore, be appropriate to dispose of this appeal at this stage in the light of the judgment of the Apex Court in the case of Seth Banarsi Dass (supra) with the direction to the Recovery Officer to decide the objection of the appellant, if not already decided, by a speaking order, expeditiously.

7. We, therefore, provide that in the event, the appellant appears before respondent No. 3 alongwith certified copy of this order and a copy of the objection filed on 9.8.2010, as contained in Annexure-5 to the writ petition, within a period of ten days, the respondent No. 3 shall decide the objection after

giving opportunity of hearing to the necessary parties alongwith the appellant and the Bank, if not already decided, expeditiously, preferably within a period of six weeks from the date of filing of such objection.

9. We, in the facts of the case, further provide that no coercive steps shall be taken against the appellant for recovery of the amount shown in citation for a period of two months or till the disposal of the objection filed by the appellant, whichever is earlier. With the above direction, the appeal stands finally disposed of.

