
(1999) 08 AHC CK 0177
In the Allahabad High Court
Case No : C.M.W.P. No. 29103 of 1995

Ram Lakhan

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Citation : (1999) 3 AWC 2671

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Sheo Shanker Tripathi, for the Appellant; C.P. Mishra, Ram Lal and P.K. Bisaria, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The prayer of the petitioner is to quash the demand citation dated 28.8.1995 issued by Tehsildar, Tehsil Meja, as contained in Annexure-2 to the writ petition at the behest of respondent No. 2. Bank of Baroda. Branch Bharatganj, which has been sued through its Manager.

2: A perusal of Annexure-2 reveals that a sum of Rs. 14,002 was remained to be paid towards installments by the petitioner and thus, he was asked to pay the same and appear before respondent No. 3 on 4.9.1995 failing which steps can be taken for his arrest, attachment of his properties and their auction.

3. Annexure-1 is a copy of the letter dated 11.8.1995 written by the petitioner to respondent No. 2 asserting, inter alia, that he had never taken any loan nor was he given any loan by the Bank, but having learnt of the steps taken by Tehsildar, he is requesting for considering the entire matter seriously, as there appears to be some fraud played on him and to take action against such persons who are responsible for the fraud in robbing him stating these fact elaborately in this writ petition.

4. When this writ petition was placed before a Division Bench on 16.10.1995. It passed the following order :

"Apart from the fact that the petitioner Ram Lakhan has seriously challenged the genuineness of the entire loan proceeding including his signature on various documents relating to the alleged grant of loan by Bank of Baroda, Bharatganj. Allahabad he has placed his poverty as also inability to pay of the alleged sum of Rs. 14,002 sought to be realised from him by citation dated 28.8.1995.

During the course of argument, Shri Sheo Shankar Tripathi, learned counsel for the petitioner argued that the petitioner may be permitted to deposit Rs. 3,000 (Rupees three thousand) which he will collect by any mode, borrow or steal and counter-affidavit may be called with reference to the specific pleading regarding genuineness of the loan proceedings.

Shri C.P. Mishra, learned counsel has accepted notice on behalf of Bank of Baroda. Bharatganj, Meja. Shri Ram Lal, learned standing counsel has accepted notice on behalf of opposite party Nos. 1 and 3.

They pray for and are granted two weeks time to file counter-affidavit. Rejoinder-affidavit may be filed within a week thereafter.

If the petitioner deposits a sum of Rs. 3,000 (Rupees three thousand only) on or before 31st October. 1995, realisation proceedings including coercive measures shall remain stayed till 11th November. 1995. The stay order will stand vacated if the said deposit is not made.

List this writ petition for admission/final disposal in the week commencing 30th October, 1995.

Sd./- Palok Basu, J.

Sd./- D. C. Srivastava, J."

5. No counter-affidavit has been filed despite expiry of three years and ten months by now, by respondent No. 2, on whose behalf notice was accepted by Shri C.P. Mishra, its learned counsel.

6. Sri Sheo Shankar Tripathi, the learned counsel for the petitioner contended that categorical statements made by the petitioner in the writ petition that he had never taken any loan from the respondent No. 2, in absence of any counter-affidavit, may be accepted and the desired relief be granted. The sum of Rs. 3,000 (Rupees three thousand) deposited by the petitioner in terms of the Interim order be also directed to be returned to him forthwith along With interest.

7. Sri P. K. Bisaria, learned standing counsel appearing on behalf of respondent Nos. 1 and 3, contended that, in the peculiar facts and circumstances, the petitioner should be given liberty to move the Collector. Allahabad, for grant of necessary relief to him, as the question whether the petitioner had in fact taken any loan from the Bank is a question of fact.

8. Sri. C. P. Mishra, learned counsel appearing on behalf o respondent No. 2 stated that despite his registered letter to respondent No. 2 on the day on which

the interim order was passed, no instruction has been given to him but as the petitioner is denying the fact of taking any loan from the Bank he should file a suit as envisaged under the provisions of the U.P.Z.A. and L.R. Act and this writ petition be dismissed.

9. Apparently no counter-affidavit has been filed either by respondent Nos. 1 and 3 or by respondent No. 2 denying the categorical facts stated by the petitioner that he is poor labourer ; that he had never made any application for grant of loan nor was he granted any loan by respondent No. 2; that he has also not signed any document pertaining to loan and that some forgery has been done towards him and some imposter has obtained loan in his name. These categorical facts have not been denied. Doctrine of non-traverse and Ex-debitio Justitiae are thus invoked by us. We should not drive the petitioner, who appears to be a poor labourer, to resort to an alternative remedy of approaching the civil court as contemplated under the U.P.Z.A. and L. R. Act after nearly about four years. We are further of the view that respondent No. 3 must return back the amount of Rs. 3,000 which the petitioner had deposited in terms of the interim order.

10. In the result, this writ petition succeeds. The impugned demand notice is quashed with this direction to respondent No. 3 to return back the sum of Rs. 3,000 to the petitioner within three months from the date of receipt of a copy of this order from any quarter if in fact the petitioner had deposited that amount in terms of the interim order.

11. Since the petitioner has been dragged in an unfortunate litigation. he is entitled to costs which we quantify to the extent of Rs. 2,000 which respondent No. 2 must pay to the petitioner within three months from today falling which it will be open for the petitioner to realise the same in accordance with law.

12. Let a writ of mandamus issue accordingly.

13. The office is directed to hand over a copy of this order within one week to Sri Bisaria for its intimation to and follow-up action by respondent No. 2.