

(2009) 04 AHC CK 0249
In the Allahabad High Court

Shiv Kumar and another

APPELLANT

Vs

State Bank of India and others (decided on 17.10.2003)

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0249

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.

Case called out. Learned counsel for petitioners is not present. Heard learned counsel for applicant in the recall application and learned counsel for respondent bank.

This writ petition was disposed of on 17.10.2003 with the direction to the respondents to consider the one time settlement of petitioners' dues. Thereafter, on 14.02.2006, Ram Chandra Singh filed this recall application. It appears that this recall application was listed several times, however learned counsel for the petitioner did not appear. Accordingly, an order was passed in this writ petition directing for issuance of notice on the recall application to the petitioners. Notices were therefore issued to the petitioners. Service on the petitioners is sufficient as per office report dated 17.12.2006/ 20.04.2009. Today, again no one is present for the petitioner neither his old counsel, i.e. Sri A.K. Srivastava, nor any new counsel.

Learned counsel for Ram Chandra Singh, who has applied for recall of order dated 17.10.2003, states that in realisation of the bank dues, immoveable property of the petitioners had already been auctioned and purchased by the applicant on 13.08.1999. It has further been stated that against the said auction, objections were filed under Rule 285(I) of the Rules framed under U.P.Z.A. & L.R. Act, which are still pending.

After auction of the petitioners' property in realisation of the dues, no settlement

could take place in between borrower and the bank. As dues had already stood paid hence there was no question of one time settlement. Learned counsel for the bank, i.e. State Bank of India, ADB Branch, Badaun states that after order dated 17.10.2003 passed in this writ petition, petitioner initially deposited about Rs.57,000/ and thereafter he deposited about Rs.1,70,000/ (total about Rs.2,27,000/). However, according to the learned counsel for the Bank, recovery charges have not yet been deposited by the petitioners. In this writ petition, petitioners did not disclose that their property had already been auctioned in realisation of the dues otherwise writ petition would have been dismissed. Accordingly, recall application is allowed. Order dated 17.10.2003 is set aside and the writ petition is dismissed.

However, petitioners are at complete liberty to withdraw the amount, which they have paid to the bank after the order was passed in this writ petition. The objections under Rule 285(I) should be decided on merit without being influenced by these orders.