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**(2004) 05 AHC CK 0161**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 5651 of 2004**

Somaru Prasad

APPELLANT

Vs

Branch Manager, Allahabad Bank

RESPONDENT

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**Date of Decision :** 17-05-2004

**Acts Referred:**

Allahabad High Court Rules, 1952 — Rule 7

**Citation :** (2004) 3 AWC 2624 : (2004) 97 RD 258

**Hon'ble Judges :** V.M. Sahai, J; Krishna Murari, J

**Bench :** Division Bench

**Advocate :** Santosh Kumar, for the Appellant; Tarun Varma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Krishna Murari, J.—By means of the present writ petition, the petitioner has challenged the recovery notice dated 14th August, 2003, issued by the respondent-bank for recovery of outstanding amount of Rs. 97,360.

2. The facts in brief are that the petitioner was granted loan of Rs. 93,000 by the respondent-bank on 3.11.1997 under Educational Employment Scheme for opening of a cloth shop. The loan was payable in instalments within five years. The petitioner initially deposited the instalments but later on he failed to do so. As a consequence, the bank issued the impugned notice dated 14.8.2003, requiring the petitioner to deposit the outstanding amount by 30.8.2003.

3. We have heard Sri Santosh Kumar, learned counsel for the petitioner and Sri Tarun Verma, learned counsel for the respondent-bank.

4. Sri Tarun Verma has pointed out that the petitioner had filed Writ Petition No. 37616 of 2003 challenging similar recovery notice which was dismissed by this Court on 28.8.2003. The petitioner has also stated in paragraph 14 of the writ petition that his earlier writ petition was dismissed.

5. On 8.4.2004, we directed the office to list the present writ petition along with

the record of Writ Petition No. 37616 of 2003. Today the record of both the writ petitions are before us.

6. A perusal of the writ petition No. 37616 of 2003 shows that the said petition was filed seeking following relief :

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned recovery notice dated 27.12.2001 issued by the respondent (Annexure- 2 to the writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent to accept the instalment as Rs. 1,000 per month instead of Rs. 2,500 per month.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to adopt coercive measures in realising the loan amount from the petitioner.

(iv) Issue any other suitable writ, order or direction, which this Hon"ble Court may deem fit and proper in the present circumstances of the case.

(v) Award cost of the petition to the petitioner."

7. It appears that when the petitioner defaulted in depositing the instalments, the bank issued recovery notice dated 27.12.2001 requiring the petitioner to deposit a sum of Rs. 20,000 which was outstanding by that time. The petitioner instead of depositing the said amount challenged the recovery notice before this Court by filing the Writ Petition No. 37616 of 2003 which was dismissed by this Court on 28.8.2003 and following order was passed :

"Heard learned counsel for the petitioner.

The recovery notice for the payment of the arrears in question had been issued on 27.12.2001. This writ petition was presented on 26th August, 2003.

Taking into consideration the facts and circumstances as brought on record in their totality, no Justifiable ground is made out for interference by this Court while exercising the extraordinary jurisdiction as envisaged under Article 226 of the Constitution of India.

The writ petition is accordingly, dismissed.

Dated 28.8.2003."

8. It appears that after the dismissal of the writ petition, the petitioner failed to deposit the amount demanded from him vide notice dated 27.12.2001. As a consequence thereof the interest kept on mounting and another recovery notice dated 14.8.2003 was issued by the respondent-bank which has again been challenged by the petitioner by means of the present writ petition. In the present writ petition, following reliefs have been sought by the petitioner :

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned recovery notice dated 14.8.2003 issued by the respondent-bank (Annexure-II to the writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent to accept the instalment as Rs. 1,000 per month instead of Rs. 2,500 per month.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to adopt coercive measures in realising the loan amount from the petitioner.

(iv) Issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the present case."

9. A perusal of the relief claimed in two writ petitions goes to show that same reliefs have been claimed by the petitioner in both the writ petitions. Except for the date of the recovery notice and the amount, there is no difference whatsoever. The facts and cause of action in both the writ petitions are same.

10. Chapter XXII Rule 7 of the Rules of the Court prohibits filing of second writ petition on the same facts. The said Rule is reproduced below :

"Chapter XXII Rule 7.--No second application on same facts.--Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts."

11. The first writ petition of the petitioner challenging the recovery notice issued by the bank having been dismissed by this Court, the second writ petition challenging the subsequent recovery notice would be barred and is not maintainable in view of the provisions of Rule 7 of Chapter XXII of the Rules of the Court. Merely because the date of notice and the amount therein is different, it cannot be said that both the writ petitions are not on the same facts or for the same cause of action.

12. Further filing of successive writ petitions on the same facts is not only against public policy but also amounts to abuse of the process of the Court as held by the Apex Court in *Sarguja Transport Service v. State Transport Appellate Tribunal, M. P. Gwalior and Ors.*, AIR 1987 SC 88.

13. Apart from above, the judgment of the earlier writ petition would operate as *res judicata* against the petitioner and the petitioner cannot be permitted to reagitate the matter again by filing a second writ petition on the same facts and for the same cause of action as held by the Apex Court in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, *Andheri and Others*, The present writ petition filed by the petitioner being the second writ petition on the same facts and for the same cause of action is not maintainable and is liable to be dismissed.

14. In view of the aforesaid discussion, the writ petition fails and is dismissed,

15. No orders as to costs.