(2014) 07 AHC CK 0081

In the Allahabad High Court

Case No : Case No. 35765 of 2004

Sona Milk Products Pvt. Ltd. — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 07 AHC CK 0081

Hon'ble Judges : Krishna Murari, J;Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Kripa Shanker Singh, Advocate for the Appellant; A.A. Khan and S. Chaturvedi, C.S.C, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—The petitioner herein had availed a loan from U.P. Financial Corporation in the year 1998. The petitioner defaulted in repayment of loan, resulting in issuance of recovery proceedings against the petitioner. A recovery citation under form 73 was issued on 30.1.2002. The petitioner submitted a proposal for One Time Settlement (OTS) vide its letter dated 15.3.2002 to the corporation. The corporation accepted the proposal vide its letter dated 31.3.2002. The petitioner accepted the terms of settlement and deposited entire dues. The Regional Manager of the Corporation thereafter wrote a letter on 12.4.2002 to the Chief Recovery Manager of the Corporation for withdrawing the recovery certificate. The corporation, however, vide its letter dated 24.4.2004 informed the petitioner that 10% collection charges against the loan amounting to Rs. 1,84,292/- since has been realized by the District Magistrate, Firozabad, from the Corporation, therefore, the amount of Rs. 1,84,292/- remains payable by the petitioner to the Corporation along with interest and in absence thereof, the documents kept as security with the Corporation by the petitioner cannot be returned. Aggrieved, against the order dated 24.4.2004 the present writ petition has been filed.

2. We have heard Sri Kripa Shanker Singh, Advocate, for the petitioner and Sri

Atiq Ahmad Khan, Advocate, for the U.P. Financial Corporation and have perused the materials available on record.

3. It is not in dispute that consequent upon failure of the petitioner to repay the loan to the Corporation, steps for recovery were initiated by the State. It is also not in dispute that soon thereafter the petitioner applied for OTS of its dues and the entire outstanding dues were cleared pursuant to the settlement arrived at between the petitioner and the Corporation. Thus, the entire outstanding dues of the Corporation were paid directly by the petitioner to the Corporation as per terms of the OTS. Neither any amount was recovered pursuant to the citation by the officials of the State from the petitioner nor the recovery was proceeded further. The grievance, therefore, of the petitioner is that in such circumstances, the state authorities were not entitled to claim any amount towards collection charges and the unilateral withdrawal of the amount from the account of the corporation was wholly without jurisdiction and the corporation cannot pass on such unauthorized liability upon the petitioner. Learned counsel for the petitioner has placed reliance upon a Full Bench judgment of this court in Mahrajwa and Others Vs. State of U.P. and Others, Para 28 of the said judgment is reproduced herein below:-

From the scheme of 1890 Act, 1950 Act and 1973 Act as also 1952 Rules and 1975 Rules one thing is amply clear that while Sections 3 and 5 of 1890 Act and Rule 29 of 1975 Rules speak of the cost of recovery to be realised along with the arrears it is necessarily to be understood and restricted to where the arrears have been recovered by the concerned authorities. If the authorities have not been able to recover the amount of arrears through coercive process undertaken by them, then there is no question of realising the cost of recovery from the defaulter. The issuance of recovery certificate is a ministerial job. If no concrete further steps have been taken and the arrears have not been realised by them and instead the defaulter pays the amount of arrears directly to the creditor or to the person to whom it is due then it cannot be said by any stretch of imagination that the State authorities have recovered the amount of arrears. In that event, there is no question of realising the cost of recovery/recovery charges from the defaulter either under the 1890 Act or under the 1975 Act. The provisions of Section 3 of the 1890 Act and Rule 29 of 1975 Rules have to be read accordingly.

4. Sri Khan appearing for the respondent-corporation on the contrary submits that as the amount of collection charges has already been withdrawn from its account by the Collector, as such the petitioner is liable to pay the collection charges and the original records kept as security cannot be returned without the petitioner paying required sum. Learned standing counsel submits that OTS was arrived at only because of recovery proceedings initiated and, therefore, the Collector was justified in appropriating the collection charges from the account of the Corporation.

5. Having heard the respective submissions, we find that in the facts and circumstances of the present case no amount towards collection charges became

due from the petitioner for being paid to the respondent-State. Admittedly, the entire dues got settled by resorting to OTS scheme, in which dues of the Corporation were directly paid by the petitioner to the Corporation. No amount was coercively realized by the state authorities nor any details of actual expenditure incurred by them have been furnished. The collection charges, in such circumstances, could not be demanded in view of the provisions of applicable law, which have been discussed in Mahrajwa and others (supra). The unilateral withdrawal of the amount from the account of the Corporation by the district revenue authorities was wholly unauthorized and cannot be sustained. Consequently, the writ petition succeeds and is allowed. The order dated 24.4.2004 passed by the Regional Manager of the Corporation is set aside and a direction is issued to the respondent-corporation to forthwith return the documents/security kept by it for securing the loan amount, within a period of two week''s from the date of presentation of a certified copy of this order. Moreover, in view of the fact that District Magistrate, Firozabad, was not entitled to appropriate the amount of Rs. 1,84,292/- towards collection charges from the account of the respondent-corporation, it will be open for the Corporation to seek return of the same from the District Magistrate, Firozabad, who would return the same to the Corporation within a period of two months.

6. Accordingly, the writ petition is allowed. No order is passed as to costs.

