
(2008) 01 AHC CK 0135
In the Allahabad High Court
Case No : Special Appeal No. 987 of 2007

State Bank of India, Sultanpur

APPELLANT

Vs

Collector D.M.Sultanpur and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Citation : (2008) 01 AHC CK 0135

Hon'ble Judges : Pradeep Kant, J and S.N.Shukla, J

Final Decision : Disposed Of

Judgement

1. Heard learned Counsel for the appellant Sri Sudeep Seth and Vinod Kumar Srivastva, holding brief of Sri Anand Kumar.

2. This special appeal has been filed challenging the order of the learned Single Judge (Hon'ble Sabhajit Yadav, J.) by which the respondents were allowed to make repayment of the loan amount under demand in easy installments and also directed that the tractor which has already been auctioned in favour of third person shall stand released with further direction that the Bank shall return the said tractor to the petitioner though auction purchaser was neither impleaded nor a prayer was made that auction proceedings be quashed.

3. The auction was held on 482007 and writ petition was filed on 6112007, i.e., after three months from the date of auction and the possession of the tractor was also delivered to the auction purchaser.

4. Sri Sudeep Seth, learned Counsel for the Bank submits that this is third writ petition by the petitioner arising out of the same transactions of loan which was taken by his father, who failed to make repayment thereof. Citation of demand was earlier issued in the name of Ramjas (deceased) who challenged the said recovery proceedings by filing W.P. No. 4017 of 2006 (MS). Before the learned Single Judge petitioner admitted the liability of the amount of loan but only prayer for easy installments. The Court showed indulgence and vide order dated 23112006 disposed of the writ petition with a direction that amount demanded

be paid in the manner given there in. However, it appears that father of the petitioner could not make payment and he died. After his death second writ petition was filed by the sons of deceased Ramjas namely, the present respondents again challenging the same recovery saying that since the father had died, therefore, order could not be complied with. In Writ Petition No. 3675 (MS) of 2007 learned single Judge recorded a categorical finding that in view of the fact that the earlier writ petition filed by the petitioner (should be father of the petitioners) had already been disposed of with certain directions, therefore, for the same cause of action subsequent writ petition is not maintainable. The Court, therefore, gave liberty to the respondents, who were petitioners in that writ petition, to approach the Bank making request for accepting the amount in installments as directed by this Court in earlier writ petition No. 4017 (MS) of 2006.

5. The Court refused to entertain the second writ petition challenging the same recovery proceedings but in view of the fact that father had died gave the opportunity to the respondents to approach the Bank for making deposits in easy installments.

6. It is the case of the appellant Bank that the respondents did not approach the Bank at all for making deposits as per the installments provided in the earlier writ petition but filed third writ petition again challenging the same recovery when citation of demand was issued.

7. The learned Counsel for the respondents disputes the statement made by the appellants Counsel and says that the respondents approach the Bank but the Bank did not give any sympathetic consideration to their request. Be that as it may, the fact remains that the second writ petition itself was not found maintainable against same loan transaction and third writ petition was equally not maintainable.

8. Whether the respondents had approached the Bank in terms of the liberty given in W.P. No. 3675 (MS) of 2007 or not and whether despite their approach the Bank did not give them any liberty to make repayment would not constitute a fresh cause of action so as to come to the Court by filing a third writ petition.

9. In case the directive issued by the Court was not being followed by the Bank, the remedy lay elsewhere and not to approach the Court by filing writ petition.

10. It may also be clarified that if for the same recovery a citation of demand is issued and the defaulter approached the Court in which indulgence is shown allowing the defaulter to make deposit in installments failing which it is left open to the Bank financial institution to proceed in accordance with law for recovering the amount and if on such failure of the defaulter to comply with the terms of the deposit as ordered by the Court, default is committed and, therefore, a fresh citation of demand is issued that will not constitute a fresh cause of action so as to entitle the defaulter to file a second writ petition arising out of the citation of demand in terms of the original recovery certificate against which recovery could

not be made from the sons of the deceased because of the Court's intention or if defaulter failed to make deposit would again not give any right to the defaulter to file second writ petition.

11. A part from the fact third writ petition itself was not maintainable, the directives issued by the Court that auction of the tractor which had taken place on 4th August, 2007 was a nullity is wholly without jurisdiction. Such a direction could not have been given without impleading the auction purchaser, who was also delivered possession of the tractor on depositing the auction money. The sale thus has been complete. The further direction that said tractor should be taken back and be handed over to the petitioner and for that matter same shall be released cannot be sustained.

12. The learned Counsel for the respondents have not been able to indicate any provision or rule under which such an order can be passed. The respondent has made a prayer that auction be set aside but he did not implead the auction purchaser and the tractor was not in possession of the Bank. For this lapse it is the respondents who are to be blamed as they have not impleaded the auction purchaser, who was a necessary party.

13. Even otherwise when auction proceedings have resulted into finality, no such order could be issued to annul the auction and at least of course until the auction purchaser is impleaded and is given opportunity to put his defence. We take notice of the fact that in compliance of the order passed by the learned single Judge in earlier writ petition the respondents did not make any deposit. We, therefore, find that the directives to return of the tractor and cancellation of auction could not have been passed in the writ petition, therefore, set aside the aforesaid directive.

14. We, however, on the specific suggestion of the Counsel for the appellant, direct that the respondents be allowed to deposit the amount in terms of the order passed by the learned Single Judge. Aforesaid recovery proceedings shall remain in abeyance subject to deposit being made as per directives issued by the learned Single Judge, but in case of failure in terms of the deposit, it would be open to the Bank to resume proceedings of recovery in accordance with law.

15. So far challenge to the auction of tractor is concerned, it will be open to the petitioner to assail the same in any appropriate proceeding, if permissible in law, but the writ jurisdiction could not have been invoked for the said purpose.

16. With the aforesaid observations, the writ petition is finally disposed of.