(1997) 01 AHC CK 0049

In the Allahabad High Court

Case No : First Appeal From Order No. 75 of 1997

Surendra Kishore Kela APPELLANT

Vs

Union Bank of India RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 4(2)

Citation : (1997) 89 CompCas 668

Hon'ble Judges : Om Prakash, J;B.K. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. The admitted facts are that the appellant had taken a loan from the respondent-bank, Union Bank of India. When the appellant failed to repay the loan, respondent No. 1 issued a recovery certificate to the Revenue authorities to recover the amount as arrears of land revenue.

2. The contention, of the appellant is that the matter is governed by the U. P. Public Moneys (Recovery of Dues) Act, 1972 (for short, "the Act of 1972"), and, therefore, in view of Section 4(2)(b) of the Act of 1972, the respondent-bank is under a legal obligation to proceed first against the mortgaged/hypothecated properties and that no recovery certificate could be issued to the Revenue authorities for making the recovery straightaway.

3. Considering the provisions of Section 4(2)(b) of the Act of 1972, we are in complete agreement with the submission made by learned counsel for the appellant. Section 4(2)(b) enjoins upon the respondent-bank to proceed first against the property hypothecated, mortgaged, encumbered, etc., and if some amount remains outstanding after exhausting the remedy against the aforesaid property, then alone a recovery certificate could be issued to the revenue authority to make recovery from other properties.

4. There is no averment from the side of the respondent and there is no observation in the impugned order that the respondent-bank has already exhausted its remedy against the hypothecated property.

5. The appeal, therefore, succeeds and is allowed. The impugned order dated January 10, 1997, passed by the trial court refusing injunction sought by the appellant restraining the respondents from proceeding against the property other than hypothecated property, the recovery certificate and the citation are set aside with the observation that the respondent-bank may proceed first against the hypothecated property and for recovery of the balance amount only recourse could be taken to the recovery certificate.