(1977) 11 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4874 of 1976

Udai Pratap and Another APPELLANT

Vs

U.P. State Financial Corporation and Others RESPONDENT

Date of Decision : 23-11-1977

Acts Referred:
Constitution of India, 1950 — Article 226
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3, 4, 4(2)

Citation : (1978) AWC 5

Hon'ble Judges : S.D. Agarwala, J;H.N. Seth, J

Bench : Division Bench

Advocate : Vijai Manohar Sahai, for the Appellant; Sridhar and S.C., for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, J.—Udai Pratap and his father Badri Prasad have filed this petition under Article 226 of the Constitution and have challenged the validity of attachments made by the Tehsildar on 30th November 1976 in respect of recovery of certain loan said to have been advanced by the U.P. State Financial Corporation, Branch Office at Varanasi, to a firm styled as Vishwakarma Auto Industries in which Badri Prasad is a partner.

2. According to the Petitioner Udai Pratap was running a shop under the name and style of Vishwakarma Auto Industries Baulia, Shivdaspur, Varanasi and was carrying on the repair work of the motor cars, trucks etc. In the year 1971, Badri Prasad entered into a partnership agreement to set up a manufacturing plant for manufacturing motor parts, etc. and to run that business under the name and style of Vishwakarma Auto Industry, with their place of business at Bhaskar Sagar Kesripur, Police Station Rohania district Varanasi (hereinafter referred to as the firm at Bhaskar Sagar Kesripur). In due course, the firm at Bhaskar Sagar Kesripur, took a loan of Rs. 47,000 from the U.P. State Financial Corporation for the construction of a factory building on plot No. 401 ''situate at village Kesripur

and as evidenced by Annexure 1 to the supplementary affidavit (indenture dated 8-7-1973) the firm mortgaged and hypothecated certain properties specified in Schedules A, B and O thereto for securing the loan taken by it. Due to certain reasons the firm was not able to repay the loan, total amount of which came to Rs. 62,000/- and odd.

3. On 13-10-1976 the Dy. Director of the U.P. State Financial Corporation, issued a recovery certificate to the Collector authorising him to recover the amount of loan due from Vishwakarma Auto Industries. According to the Petitioners, the Collector is proceeding to recover the loan from the properties belonging to Vishwakarma Auto Industries situated at Shivdaspur G.T. Road Varanasi which have nothing to do with the loan taken by the firm at Bhaskar Sagar Kesripur. The Petitioners claimed that they had all through been ready to pay their share of loan and that proceedings for the attachment and sale of the property at Shivdaspur is quite illegal and is liable to be quashed.

4. Learned Counsel for the Petitioner has, however, conceded before us that with regard to the loan taken by the firm at Bhaskar Sagar, Kesripur, liability of Badri Prasad was joint and several, and that the Corporation was entitled to recover the whole loan from him. He, however, relied on Section 4 of the U.P. Public Moneys (Recovery of Dues) Act and contended that the Respondents have no jurisdiction to recover the loan by proceeding against properties other than those which had been pledged or hypothecated, without first proceeding against those properties. According to him the agreement (Annexure S 1 to the supplementary affidavit) in the instant case clearly indicates the properties which had been pleged or mortgaged for securing the loan taken by the firm at Bhaskar Sagar Kesripur. Properties attached from the workshop, which was being run under the style of Vishwkarma Auto Industries at Shivdaspur, had neither been pledged nor mortgaged for securing the loan in question. Accordingly, the entire proceeding for attachment and sale of the properties of the Petitioners at Shivdaspur was without jurisdiction and is liable to be quashed.

5. A perusal of Annexure I to the supplementary affidavit clearly shows that no property in the premises of the workshop at Shivdaspur had either been mortgaged or pledged for securing the loan taken from the U.P. State Financial Corporation. In paragraph 22 of the petition it has been clearly stated that it was not open to the Respondents to proceed against the Petitioner''s property situated at Shivdaspur without first proceeding against the property which had already stood pledged or mortgaged for securing the loan advanced by the U.P. State Financial Corporation. This averment has not been controverted by Sri K.M. Lal who has filed a counter affidavit on behalf of the U.P. State Financial Corporation. No counter affidavit has been filed on behalf of other Respondents. In the circumstances we have to proceed on the basis that the Respondents are seeking to recover the loan advanced by the U.P. State Financial Corporation to attachment and sale of the property of the Petitioners without first proceeding against the property which had either been pledged or mortgaged with a view to

secure the loan advanced by the Corporation. Sub-section (2) of Section 4 runs thus-

(2) Where the property of any person referred to in Section 3 is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, the Corporation, a Government Company or Banking Company, then-

(a) in every case of a pledge of goods, proceedings shall first be taken for sale of the thing pledged, and if the proceeds of such sale are less than the sum due, then proceedings shall be taken for recovery of the balance as if it were an arrear of land revenue;

Provided that where the State Government is of opinion that it is necessary so to do for safeguarding the recovery of the sum due to it or to the Corporation, the Government Company or Banking company, as the case may be, it may for reasons to be recorded, direct proceedings to be taken for recovery of the sum due, as if it were an arrear of land revenue before or at the same time as proceedings are taken for sale of the thing pledged;

(b) in every case of a mortgage, charge or other encumbrance on immovable property, such property or as the case may be, the interest of the defaulter therein, shall first be sold in proceedings for recovery of the sum due from that person as if it were an arrear of land revenue, and any other proceeding may be taken thereafter only if the Collector certifies that there is no prospect of realisation of the entire sum due through the first mentioned process within a reasonable time.

6. The import of this section clearly is that normally proceedings for recovery of loan advanced by the U.P. State Financial Corporation, by attachment or sale of properties other than those which have been pledged or mortgaged for raising the loan, cannot be taken without first making an attempt to recover the same by attachment and sale of the mortgaged or pledged properties. However, if in the case of pledge of goods the State Government is of opinion that it is necessary so to do for safeguarding the recovery of the sum due it may direct that the same may be recovered as arrears of land revenue either before or at the same time as the proceedings are taken for sale of the thing pledged. Similarly in a case where the loan has been secured by mortgage, charge or other encumbrance on immovable property, proceedings to recover the same from other property can be taken only if the Collector certifies that there is no prospect of realizing the entire loan by sale of the property secured. In this case, we neither find a certificate from the Collector to the effect that the sum due to the Corporation cannot be realised by the sale of mortgaged or pledged properties nor there any order of the State Government opining that in order to safeguard the recovery of loan it is necessary to proceed to recover the loan as arrears of land revenue without first taking steps to sell the pledged goods if there were any. In the circumstances, it is quite obvious that the Respondents in

attempting to realise the loan advanced by the U.P. State Financial Corporation, by attaching and selling the properties situate at Shivdaspur (which properties had neither been hypothecated nor pledged for securing the loan) without first proceeding to realise the same by proceeding against the properties which had been mortgaged or pledged for securing the loan in question, are acting without jurisdiction.

7. In the result, the petition succeeds and is allowed. The properties of the Petitioners, situated at Shivdaspur, which have been attached for realising the dues of Vishwakarma Auto Industries Bhaskar Sagar Kesripur shall be released from attachment and the Respondents shall not proceed to recover the aforesaid dues from those properties unless they have first proceeded against the properties which stand pledged or mortgaged under the agreement between Vishwakarma Auto Industries Bhaskar Sagar Kesripur and the U.P. State Financial Corporation. Parties are directed to bear their own costs.

