



2026:AHC:35479-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 43641 of 2007

Surendra Kumar

.....Petitioner(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Petitioner(s) : J.P. Pandey

Counsel for Respondent(s) : C.S.C., D. Awasthi, Mohd. Saleem Khan

AFR

Court No. - 1

HON'BLE AJIT KUMAR, J.

HON'BLE SWARUPAMA CHATURVEDI, J.

1. Heard Sri J.P. Pandey, learned counsel for the petitioner, Sri Utkarsh Kharwar, learned Advocate holding brief of Mohd. Saleem Khan, learned counsel for the State Financial Corporation, Sri Mukul Tripathi, learned Standing Counsel for the State and perused the record.

2. Petitioner before this Court claims to be a third party to the advance made by the State Financial Corporation to the erstwhile proprietor of the proprietorship firm namely, M/s N.B. Industries, which of course been run by his father.

3. It is stated that in order to realize the dues and clear the debts, the State Financial Corporation had already auctioned the industrial unit of the firm and now has sought to *per se* recovery of the interest part from the petitioner for seven years since death of his father. Two fold arguments have been advanced by learned counsel appearing for the petitioner which is as under:-

(i) Firstly, the amount of recovery admittedly being more than Rs. 10 lakh is not recoverable by the State Financial Corporation taking recourse to the provisions as contained under the Revenue Recovery Act, 1890 or U.P. Public Moneys (Recovery of Dues) Act, 1972 as has been admitted in the

counter affidavit, by way of arrears of land revenue.

(ii) Secondly, the petitioner having not succeeded the proprietorship of his father, he could not have been saddled with the liability to clear the dues of the proprietorship firm inasmuch as the industrial unit having been auctioned and sold away, no liability would be upon a third party who was not connected with the proprietorship firm.

4. In support of his first submission, learned counsel has placed reliance upon judgment of Division Bench of this Court in the matter of ***Man Mohan Rai vs. U.P. Financial Corporation And Others, 2014 (8) ADJ 25 (DB)***, and has placed before the Court paragraph nos. 2, 5, 7, 8, 10, 11, 12, 15, 16 and 17 of the said judgment.

5. It is contended that the legal issue was raised in the said case as to the maintainability of the recovery proceedings under the U.P. Public Moneys (Recovery of Dues) Act, 1972 in the face of the emergence of the new law in which name of Recovery of Debts and Bankruptcy Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. Sri Pandey has placed relevant provisions of two Acts to buttress his arguments on point no. (i) and also reliance has been placed on paragraph no. 44 of the counter affidavit.

7. Meeting the submissions, learned counsel for the State Financial Corporation though tried to defend the recovery for the reasons assigned in the counter affidavit, but could not cite any judgment to the contrary, nor could place any other judgment to draw any inference there from that the *ratio of the judgment* in case of ***Man Mohan Rai (supra)***, stood diluted subsequently.

8. Having heard learned counsel for the respective parties and having perused the record, we first proceed to dealt with the argument raised as point no. (i) and if, as we are of the considered view, this argument is upheld, the recovery would stand vitiated in law and there may not be necessity to dealt with point no. (ii).

9. From the recovery certificate which has been issued in the matter and

which has been brought on record at page no. 37 of the paper book, we find that it was issued under the Revenue Recovery Act, 1890 (as amended in the year 1966) by the Managing Director, U.P. Financial Corporation and addressed to the Deputy Commissioner, Delhi (West), to issue a consequential recovery order. It transpires from the record that he petitioned against the recovery certificate before the authority but the Managing Director rejected the same vide order dated 28.08.2007 which has been challenged before this Court and therefore, it appears that before the consequential action could have been taken by the Commissioner of Delhi, petitioner had approached this Court and got the order for interim protection on 12.09.2007.

10. We have perused the recovery certificate and it transpires that the principal amount is found to be nil whereas the interest has been charged for back seven years @ Rs. 7,340.06/- per day w.e.f. 21.06.2005. It, therefore, clearly comes out that the State Financial Corporation has sold away the entire assets of the firm to clear its debts and now for the interest part recovery has been issued.

11. Upon reading the recitals contained in the recovery certificate, we find that the recourse has been taken to the Revenue Recovery Act, 1890 to pursue the recovery of dues of the State Financial Corporation under Section 32G of the State Financial Corporation Act, 1951. Relevant provisions as contained under Section 32G of the Act, 1951 is reproduced hereunder:-

"Section 32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.—Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

12. A bare reading of the aforesaid provisions clearly demonstrate that the power is vested with the State Financial Corporation to recover the dues from the industrial concerned by pursuing it through the Collector of the District who would consequentially act as a recovery officer to recover the dues by way of arrears of land revenue. Naturally, therefore, the Revenue Recovery Act, 1890 would come into play for the purposes of initiation of action of recovery pursuant to the recommendation made by the State Financial Corporation. However, upon perusal of para no. 33 of the counter affidavit sworn by one Sri K.S. Sonkar, Deputy Senior Manager (Law), U.P. Financial Corporation, the recovery certificate is claimed to have been issued under the U.P. Public Moneys (Recovery of Dues) Act, 1972. Thus, in view of this admission made in para no. 33 of the counter affidavit, there would be no quarrel about the status of the recovery as a land revenue and the *modus operandi* is the U.P. Land Revenue Act.

13. Admittedly, the recovery is of more than one crore, may be by way of dues towards the interest as against the loan advanced to the industrial concerned and, therefore, the question rightly framed is, as to whether such recovery could have been pursued whereas the recovery under the U.P. Public Moneys (Recovery of Dues) Act, 1972 could not be of an amount more than 10 lakhs in view of the provisions contained under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'Act of 1993') and more especially in the circumstances when the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 had already come into existence prior to the recovery in question being pursued by the State Financial Corporation.

14. The controversy as to the legal issue may not detain us any longer in view of the judgment of the Division Bench which has remained unreplied to in the sense that no contrary judgment has been cited before us. Division bench in **Man Mohan Rai (supra)**, has dealt with this specific issue and overriding effect of Section 34 of Act of 1993.

15. Although the question no. (i) as framed above would stand answered in favour of the petitioner but we would like here to also notice the Act of 2002 which in view of the judgment of Supreme Court can equally be invoked by way of measures to recover the dues by the Banking as well as Non-Banking

Financial Institution.

16. Section 2(1)(m) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 defines 'financial institution' as under:-

"Section 2(1)(m) : "financial institution" means—(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956);

(ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);

(iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958);

(iiia) a debenture trustee registered with the Board and appointed for secured debt securities;

(iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;

(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act."

17. Section 2(1)(ma) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 defines 'financial lease' as under:-

"Section 2(1)(ma) "financial lease" means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be."

18. The State Financial Corporation of the State of U.P. is a creation of

statutes to advance loan and grant financial lease to raise an industrial concerned for any amount and comprehensive Act namely, State Financial Corporation Act, 1951 was enacted by the State Legislature. Since it is a body corporate, created under the statute without any financial limits, this Non-Banking Financial Institution would not land into any of the exception clauses of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to hold it back from issuing any recovery for recovering its dues to get cleared its debts.

19. In the circumstances, therefore, in our considered view the measures as prescribed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would have been also adopted by the State Financial Corporation.

20. Upon a pointed query being made, learned respondent Corporation could not bring to our notice any provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which may otherwise operate as a bar from any action under this Act by the State Financial Corporation more especially in the circumstances when it is Non-Banking Financial Institution falling within the meaning of 'financial institution' as prescribed under the Act of 2002 which is reproduced herein above.

21. So we are also of this view that in view of the provisions contained under the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the measures ought to have been adopted under Section 13(4) by the State Financial Corporation instead of taking recourse to the Revenue Recovery Act, 1890 or U.P. Public Moneys (Recovery of Dues) Act, 1972.

22. Thus, in view of the above, the recovery certificate deserves to be quashed and the petition deserves to be allowed on this score alone. So far as second question is concerned regarding liability, that stage has yet not arisen because we are holding the recovery as untenable. This question would be decided in an appropriate case when it comes for consideration of this Court in a matter of recovery, though legally but whether reasonable.

23. Accordingly, the writ petition succeeds and is **allowed**. The order

recovery certificate dated 30.09.2005 is hereby quashed, so also the decision taken by the competent authority of the State Financial Corporation to uphold the recovery certificate vide order dated 09.07.2007, the same is also quashed. It is left open for the respondents to pursue the recovery otherwise if tenable by taking recourse to such provisions as may be available in law.

(Swarupama Chaturvedi,J.) (Ajit Kumar,J.)

February 17, 2026

#Vikram/-