

The High Court of Madhya Pradesh
WP No. 1533/2013
Nirmal Singh Vs. State of India and Anr.

Gwalior, dtd. 18/09/2019

Shri RK Soni, Counsel for the petitioner.

Shri Raju Sharma, Counsel for the respondents/ Bank.

This petition under Article 226 of the Constitution of India has been filed against the order/letter dated 22/02/2013 (Annexure P5) passed by respondent No.1, by which the petitioner has been directed to arrange to close the loan account within fifteen days from the date of receipt of the said letter/order, otherwise the balance in his deposit accounts will be transferred to the loan account only.

(2) The necessary facts for disposal of present petition, according to the petitioner are that, the petitioner is a retired person having retired on 1/11/2003 and his only source of income is pension. It is further pleaded that the petitioner is having a Saving Bank Account No.100554363118 in State Bank of India, Jiwaji Chowk, Lashkar, Gwalior. The wife of the petitioner, namely, Smt. Sugamlata was the owner of House No.B-67, situated in Samadhiya Colony, Gwalior which was mortgaged with the respondent No.2 for taking loan. It is submitted that the mortgaged property has been attached by the Bank under the Secularization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 [in short "SARFAESI Act, 2002"]. It is further submitted that the petitioner is a heart patient, whereas the wife of the petitioner is an asthmatic patient. Since the

mortgaged property has already been attached by the Bank and the same is in the possession of the Bank, therefore, the respondents have no right to withhold the amount of pension which the petitioner is getting. However, the respondents by letter dated 22/02/2013 (Annexure P5) have withheld Rs. 1 lac and the pension of the petitioner is also not being released in the light of letter dated 22/02/2013. It is submitted that under the provisions of Section 60 of CPC as well as under the Pension Rules, the pension of the petitioner cannot be attached under any decree. The petitioner had filed an application for disbursement of his pension, however, the pension amount has not been disbursed and accordingly, this petition has been filed challenging the letter dated 22/02/2013 being violative of Section 60 of CPC.

(3) The respondents/ Bank have filed their return and have submitted that the petitioner was the co-borrower along with wife. The son of the petitioner is the Proprietor of the Firm, namely, Sugam Enterprises. The said Firm had obtained a loan of Rs.15 lacs and later on, it was extended by Rs.7 lacs. The said loan was granted after mortgaging the property bearing House No.67, situated in Samadhiya Colony, Gwalior. The documents of title were submitted by the petitioner and his family members. The sale deed on which the loan was obtained, was later on found to be a forged document. The original sale deed of the aforesaid house was already mortgaged with MPFC from where the loan was also obtained by the petitioner, his wife and son. On further enquiry, it has also come to the light

that the petitioner, his wife and son prepared many forged sale deeds of the aforesaid house and obtained loan from Central Bank of India, Allahabad Bank, Bank of Maharashtra, Bank of Baroda, Corporation Bank, LIC Housing Finance, UCO Bank and MPFC apart from the State Bank of India. It is apprehended that the petitioner, his wife and his son might have taken loan from other financial institutions also by submitting forged copies of the sale deed of the property in dispute. The petitioner, his wife Smt. Sugamlata stood as a guarantor for repayment of aforesaid loan of Rs.22 lacs and since it was not paid, therefore, the answering respondents/ Bank took possession of the said mortgaged house under the provisions of SARFAESI Act, 2002. Later on, the mortgaged house was auctioned by MPFC and, therefore, the respondents/ Bank were compelled to file a Writ Petition and the auction done by MPFC has been stayed by this Court by order dated 28/11/2011 passed in Writ Petition No.7808 of 2011. It is submitted that since the forgery was committed at a large scale, therefore, on the report of the Central Bank of India, the Economic Offences Wing (in short "EOW") has also registered a criminal case against the petitioner, his wife and his son and the original documents as well as forged documents have been seized by EOW. It is further submitted that although the paper possession has been taken but in view of the fact that the same house was mortgaged by the petitioner, his family members with other financial institutions/banks, therefore, the respondents/Bank are not in a position to recover the outstanding amount by auctioning the house in question. Under

these circumstances, it is submitted that the respondents had no option to recover the amount from the amount deposited in the Bank account of the petitioner with the Bank.

(4) In reply, it is submitted by the Counsel for the petitioner that although the petitioner was the co-borrower but later on, the said loan account was closed and a fresh agreement of loan was executed in which the petitioner was not co-borrower and accordingly, it is submitted that once the loan account in which the petitioner was co-borrower has been closed, then the pension of the petitioner cannot be recovered as well as the amount deposited in the account of the petitioner cannot be adjusted against the outstanding amount.

(5) Heard the learned Counsel for the parties.

(6) The respondents, in their return, have specifically stated that the petitioner and his family members by forged sale deed of House No.B-67, situated in Samadhiya Colony, Gwalior has obtained loan from eight other financial/banking institutions apart from the State Bank of India. The return was filed by the respondents/ Bank on 17/04/2013. However, the petitioner has chosen not to file rejoinder to the said return. Thus, it is clear that the allegation of taking loan from eight other financial/banking institutions on the strength of forged copies of sale deeds of House No.B-67, situated in Samadhiya Colony, Gwalior has remained un rebutted. This Court is left with no other option but to accept the allegations made by the respondents that on the strength of forged sale deeds of property bearing House No.B-67

situated in Samadhiya Colony, Gwalior, the petitioner and his family members have cheated other financial institutions/ Banks also and have taken loan from them. Thus, it is clear that not only the petitioner is a defaulter but he along with his family members have cheated the financial institutions/ Banks and thereby, has siphoned the public money and now, he has not repaid the outstanding amount.

(7) It is submitted by the Counsel for the petitioner that for non-payment of amount by loanee for which petitioner was surety and guarantor, the Bank cannot withdraw the amount from the account of petitioner without consent and approval of the guarantor. To buttress his contention, the counsel for the petitioner has relied upon the judgment passed by a Coordinate Bench of this Court in the case of **Jagdish Prasad Batham vs. Union of India and Others**, reported in **2005 (2) MPLJ 500** as well as the order dated 12th April, 2013 passed by a Coordinate Bench of this Court in the case of **Thakur Lal Dhakad vs. State Bank of India and Others in Writ Petition No. 7387 of 2012 [Gwalior Bench]**

(8) The moot question for consideration is that where the petitioner, by playing fraud on the Court, had obtained loan and now, has not repaid the same, then whether the order of attachment of pension by the Bank, can be quashed by granting equitable relief to the petitioner or in spite of Section 60 of Civil Procedure Code, this Court can refuse to grant equitable relief to the petitioner.

"In Halsbury's Laws of England, Fourth Edition, Vol.

16, pages 874- 876, the law is stated in the following terms:

"1303. He who seeks equity must do equity.

In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

*** ** 1305. He who comes into equity must come with clean hands. A court of equity refuses relief to a plaintiff whose conduct in regard to the subject matter of the litigation has been improper. This was formerly expressed by the maxim "he who has committed iniquity shall not have equity", and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where

the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

The Supreme Court in the case of **State of Maharashtra vs.**

Prabhu, reported in **(1994) 2 SCC 481** has held as under : -

"4. Even assuming that the construction placed by the High Court and vehemently defended by the learned counsel for respondent is correct should the High Court have interfered with the order of Government in exercise of its equity jurisdiction. The distinction between writs issued as a matter of right such as habeas corpus and those issued in exercise of discretion such as certiorari and mandamus are well known and explained in countless decisions given by this Court and English Courts. It is not necessary to recount them. The High Courts exercise control over Government functioning and ensure obedience of rules and law by enforcing proper, fair and just performance of duty. Where the Government or any authority passes an order which is contrary to rules or law it becomes amenable to correction by the courts in exercise of writ jurisdiction. But one of the principles inherent in it is that the exercise of power should be for the sake of justice. One of the yardstick for it is if the quashing of the order results in greater harm to the society then the court may restrain from exercising the power."

The Supreme Court in the case of **ONGC Ltd. vs. Sendhabhai**

Vastram Patel reported in **(2005) 6 SCC 454** has held as under :-

"23. It is now well settled that the High Courts and the Supreme Court while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India may not strike down even a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the appellant in

a given case although the Court may find the same to be justified in law. [See *S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd.*]

24. A similar view has been taken by this Court in a large number of decisions including *High Court of Judicature at Bombay v. Brij Mohan Gupta, N.K. Prasada v. Govt. of India* (SCC para 26), *Inder Parkash Gupta v. State of J&K* (SCC para 42) and *Board of Control for Cricket in India v. Netaji Cricket Club* (SCC para 102)."

The Supreme Court in the case of **Chandra Singh Vs. State of Rajasthan and another** reported in **AIR 2003 SC 2889** has held as under :-

"43. In any event, even assuming that there is some force in the contention of the appellants, this Court will be justified in following *Taherakhaton v. Salambin Mohammad* (1999) 2 SCC 635, wherein this Court declared that even if the appellant's contention is right in law having regard to the overall circumstances of the case, this Court would be justified in declining to grant relief under Art. 136 while declaring the law in favour of the appellants.

44. Issuance of a writ of certiorari is a discretionary remedy. (See *Champalal Binani v. CIT, West Bengal*, AIR 1970 SC 645). The High Court and consequently this Court while exercising its extraordinary jurisdiction under Art. 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Art. 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. (See *S.D.S. Shipping Pvt. Ltd. v. Jay Container Services Co. Pvt. Ltd. and others* (2003 (4) Supreme 44). Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive

another illegal one. This Court also in exercise of its jurisdiction under Art. 142 of the Constitution of India is entitled to pass such order which will be complete justice to the parties.

45. We have been taken through the annual confidential reports as against the appellants. Having gone through the same, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction in favour of the appellant. This Court in Brij Mohan Gupta's case (supra) has also refused to exercise its discretionary jurisdiction in favour of the appellant although the order of the High Court was found liable to be set aside being not in accordance with law.

46. This Court said that this principle applies to all kinds of appeals admitted by special leave under Art. 136, irrespective of the nature of the subject-matter. So even after the appeal is admitted and special leave is granted, the appellant must show that exceptional and special circumstances exist, and that, if there is no interference, substantial and grave injustice will result and that the case has features of sufficient gravity to warrant a review of the decision appealed against on merits. So this Court may declare the law or point out the lower Courts error, still it may not interfere if special circumstances are not shown to exist and the justice of the case on facts does not require interference or if it feels the relief could be moulded in a different fashion.

47. The observations made in paras 15-20 of the Tahera Khatoun (supra) can be usefully applied to the facts and circumstances of the case on hand."

The Supreme Court in the case of **A.P. State Financial Corporation**

Vs. M/s GAR Re-Rolling Mills and others reported in AIR 1994 SC 2151

has held as under :-

"18. There is no equity in favour of a defaulting party which may justify interference by the courts in exercise of its equitable extraordinary jurisdiction under Article 226 of the Constitution of India to assist it in not repaying its debts. The aim of equity is to promote honesty and not to frustrate the legitimate rights of the

Corporation which after advancing the loan takes steps to recover its dues from the defaulting party."

The Supreme Court in the case of **M.P. Mittal Vs. State of Haryana and others** reported in **AIR 1984 SC 1888** has held as under :-

"5. Now there is no dispute that the appellant knowingly and deliberately entered into the Guarantee agreement, and is liable as Guarantor to make payment of the dividend due from Messrs. Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at 2,02,166/- in respect of the period ending with, the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him and that the appellant made no attempt to discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail."

In the case of **Wave Hospitality Pvt. Limited Vs. Union of India [W.P (c) No. 5511/2019]** the Delhi High Court, by order dated **30-5-2019**, has held as under :

"14. In our considered view, if we take note of the preliminary objections raised by the respondents and

we apply them in the peculiar facts and circumstances of this case, we have to hold that it is not an appropriate case where the discretion, extraordinary in nature available to this Court should be exercised in favour of persons against whom there are serious allegations of money laundering and who are prima facie found to be not co-operating in the matter of investigation and enquiry into the matter."

(9) In the present case, a notice dated 22/02/2013 (Annexure P5) was issued by the Bank, by mentioning specifically, that the petitioner is a co-borrower. The said show cause notice was replied by the petitioner by his reply annexed as Annexure P7. In the said reply, the petitioner did not dispute that he is not the co-borrower. Further, in the entire writ petition, the petitioner has not pleaded that he is not the co-borrower. Further from the record of the loan account which has been filed by the respondent, it is clear that the petitioner had signed the revival agreements also. The petitioner has nowhere stated that his original loan account was closed and new CC limit was sanctioned in which the petitioner was not a party. Thus, it is clear that the petitioner is a co-borrower along with his wife and son. Further, it is the case of the respondents/Bank, that on the basis of forged sale deeds, loan were obtained from 9 banks. The first loan was obtained from MPFC and thereafter, loans were taken by mortgaging the same property on the strength of forged sale deed. The petitioner has not filed any rejoinder to the return filed by the respondents/ Bank. Thus, it is clear that the petitioner and his family members, have cheated various banks by mortgaging the same property by preparing forged sale deed. Further, the

petitioner and his family members have not repaid the loan amount. It is submitted by the Counsel for the petitioner, that by the impugned notice, the Bank had decided to withhold the amount of Rs.1 lac. Therefore, the bank may adjust the said amount. It is further submitted that the Bank is in possession of one FDR of 3 lacs, and the said amount can be adjusted against the outstanding loan amount. When a specific question was put to the Counsel for the petitioner, that whether, he is making above-mentioned submissions on the instructions of his client/petitioner or not, then it was replied by the Counsel for the petitioner, that he has not sought any instructions from the petitioner in this regard. This Court is of the considered opinion, that making concessional statements without seeking instructions from the client, may not only amount to misleading the Court, but would also amount to professional misconduct. Therefore, the Counsel should not make any submission in the form of undertaking, without seeking proper instructions from his party.

(10) Further, the Counsel for the petitioner was asked as to whether, the petitioner is ready and willing to give any reasonable proposal for the refund of the total outstanding amount or not, then it was submitted by the Counsel for the petitioner, that since, the property has already been attached, therefore, the respondents/Bank, may recover the outstanding amount, after auctioning the property.

(11) It is submitted by the Counsel for the respondents/Bank, that the property which was mortgaged by the petitioner and his wife and son,

cannot be sold, because the same property has been mortgaged with 8 different banks/financial institutions. The MPFC had auctioned the property, but on the writ petition filed by the SBI/respondents, the auction done by the MPFC has been stayed.

(12) Thus, it is clear that the proposal given by the Counsel for the petitioner was nothing but an attempt to mislead the Court. Thus, it is clear that the petitioner is not inclined to refund the outstanding loan amount.

(13) Thus, where the petitioner has not only obtained loan by playing fraud on the Bank, but has not repaid the loan amount, then this Court may refuse to entertain the petition under Article 226 of the Constitution of India, for the simple reason, that *he who seeks equity must do equity*.

(14) Accordingly, this Court is of the considered opinion, that not only the petitioner had suppressed material facts in the writ petition, but at the same time, his conduct dis-entitles him for the equitable relief, under Article 226 of the Constitution of India. The respondents are permitted to proceed further in the light of notice dated 22/02/2013.

(15) Accordingly, this petition fails and is hereby **dismissed**.

(G. S. Ahluwalia)
Judge