

CASE NO.:
Appeal (civil) 5637 of 2007

PETITIONER:
Udyami Evam Khadi Gramodyog Welfare Sanstha and another

RESPONDENT:
State of U.P. and others

DATE OF JUDGMENT: 05/12/2007

BENCH:
S.B. Sinha & J.M. Panchal

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5637 OF 2007
[Arising out of SLP (Civil) No. 3265 of 2007]

S.B. SINHA, J :

1. Leave granted.
2. Extent of Superior Courts' jurisdiction to dismiss a writ petition for alleged suppression of material fact is involved in this appeal which arises out of a judgment and order dated 19.07.2006 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WP No. 4274 (M/B) of 2006.
3. Basic fact of the matter is not in dispute.

Appellant is a cooperative society (Samiti). It applied for loan for establishment of an industry for manufacturing 'Aluminum Pottery' from the respondents. A loan of Rs. 5,24,000/- was sanctioned in the year 1991. A sum of Rs. 3,09,000/- was released by the respondents. Again, a sum of Rs. 90,000/- was sanctioned in 1996. It filed an application for grant of loan of Rs. 22,00,000/- under the 'Consortium Bank Credit Scheme' for establishing an unit for manufacturing P.V.C. Shoe Sole. A sum of Rs. 16,20,000/- was sanctioned and Rs. 13,20,000/- was released. The Samiti allegedly defaulted in making payments. Recovery proceedings were initiated against the Samiti. Several writ petitions were filed by it questioning the legality thereof.

4. A purported public interest litigation was also filed wherein Suresh Chandra Sharma (Appellant No. 2 herein) was also a party; praying for the following reliefs:

"i) to hold the provisions of Section 35A of the U.P. Khadi & Village Industries Board Act, 1960 to be unconstitutional and declaring the same ultra vires the provisions of Articles 14, 21 and 300A of the Constitution of India;
ii) issue a writ, order or direction in the nature of Certiorari to quash the recovery certificates dated 14.9.05, 19.7.05 and 10.9.2002 contained in Annexures Nos. 4,5 and 6 issued by U.P. Khadi and Gramodyog Board, Lucknow.
iii) issue a Writ, order or direction in the nature of Mandamus commanding the opposite party Nos. 2,3 and 4 to get recovery of amount due against the members of Petitioners society through due process of law other than recovery the same as

arrears of land revenue\005"

5. It appears some other writ petitions were also filed by the appellant, as would appear from the counter affidavit filed on behalf of the respondents.

However, fresh recovery proceeding had been initiated which were not the subject matter of challenge in the writ petitions filed by the Appellant before the High Court.

6. A fresh writ petition was filed. The same has been dismissed by reason of the impugned judgment holding that the appellants have suppressed the material fact, viz., filing of four writ petitions on the same cause of action and, thus, it was not maintainable. Appellants are, thus, before us.

7. Mr. Uma Datta, learned counsel appearing on behalf of the appellants, would submit that the statement made by the writ petitioners that no other writ petition was filed on the same cause of action was correct as from a perusal of the four writ applications, reference whereof was made by the High Court in its impugned judgment, it would appear that they were filed on different causes of action.

8. Mr. S. Wasim A. Qadri and Mr. Girdhar G. Upadhyay, learned counsel appearing on behalf of the respondents, on the other hand, submitted that in different writ petitions, the petitioners questioned the recovery proceedings, citations and sale of the property, as orders were passed at different stages of the same recovery proceedings.

9. Although the prayers made in the four writ applications are apparently different, having gone through the writ applications, it became evident that the core issue in each of the matter centers round recovery of the amount advanced to the appellants by the bank. Evidently, orders passed in different stages of the proceedings as also new proceedings based upon fresh calculation on interest on the principal sum had been in question from time to time. As indicated hereinbefore, even a public interest litigation was filed wherein also Appellant No. 2 was a party. Maybe that validity of Section 35A of the U.P. Khadi and Village Industries Board Act, 1960 was one of the issues raised therein but even the recovery proceeding was the subject matter thereof.

10. In the public interest litigation, Section 35A of the U.P. Khadi and Village Industries Board Act, 1960 was challenged on the premise that even the cooperative societies were required to take recourse to the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Such a contention has expressly been rejected by this Court in Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. and Others [(2007) 6 SCC 236].

11. As the law operating in the field has recently been laid down by this Court in Arunima Baruah v. Union of India and Others [(2007) 6 SCC 120] in the following terms, it is not necessary to reiterate the same over again.

However, therein in the peculiar fact of the matter, it was observed:

"20. In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a pair of clean hands, the court at that point of time will be entitled to determine the case on merits having

regard to the human right of the appellant to access to justice and keeping in view the fact that judicial review is a basic feature of the Constitution of India."

12. Respondent Nos. 2 and 3 in their counter-affidavit have drawn our attention to an order dated 12.06.2003 passed by the high Court in writ petition No. 25359 of 2003 wherein it was observed:

"this is the sixth writ petition against recovery. In the fifth Writ Petition No. 22933 of 2003, auctions of residential houses No. 22 has been stayed by this Court. Now the other properties are sought to be auctioned/sold. I do not find any prima facie case made out to interfere in the matter of recovery at this stage"

13. The said writ petition have also been dismissed by an order dated 06.12.2005 by a Division Bench of the Allahabad High Court.

14. In their counter-affidavit, the respondents stated:

"21. That in reply to the events mentioned against 03.06.2003 and 09.06.2003 it is submitted that the sale proclamation was necessary legal proceeding since even after citation had been issued, the payment of the amount under recovery had not been made. In this view of the matter, the writ petition which was of the same nature as the earlier writ petitions was not only misconceived but was also abuse of process of court by the Samiti. It is pertinent to state here that the recovery certificates which were issued on 14.09.2005 and 19.07.2005 since by that time, the further interest on the loan amount had accrued which required issue of fresh recovery certificates. However, the recovery certificates dated 10.09.2002 had been issued earlier before filing of the writ petition. In view of the facts, it is submitted that there was no occasion for the petitioner no. 2 joining hand with so-called Sanstha, the petitioner no. 1 challenged these recovery certificates. The challenge, which was made by the petitioners before the Lucknow Bench, Allahabad, High Court was clearly an abuse of the process of Court."

In the said counter-affidavit, it has further been disclosed that after being unsuccessful in their attempt to stall the recovery proceedings against the Samiti, a fictitious welfare Sanstha, namely, Udhyami Evam Khadi Gramodyog Welfare Sanstha was started by Appellant No. 2.

We, therefore, are of the opinion that the attempt on the part of the appellants herein must be termed as 'abuse of the process of law'.

15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law.

In Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries and Another [(1980) 3 SCC 311], this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.

16. For the reasons aforementioned, there is not merit in this appeal which

is dismissed accordingly with costs. Counsel's fee quantified at Rs. 50,000/-

JUDIS