

IN THE COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 804 of 2018 (M/S)

Devendra Singh ...Petitioner

Versus

District Magistrate / Collector & others ... Respondents

Present:

Mr. Lalit Sharma, Advocate for the petitioner.

Mr. N.S. Pundir, Deputy Advocate General for the State of Uttarakhand / respondents.

Dated: 28th March, 2018

JUDGMENT

Hon'ble Sharad Kumar Sharma, J.

The petitioner admittedly stood as a guarantor of a loan advanced to respondent No. 4, by respondent No. 3, for purchase of a Truck. The said loan transaction was governed by the terms of an agreement executed between the respondent Nos. 3 and 4, of which, the petitioner stood as a guarantor.

The respondent No. 4 apparently committed a default and as a consequence thereto, invoking the arbitration clause as contemplated in the agreement, Arbitration Case No. 422 of 2017, was drawn against the respondent No. 4, in which, the present petitioner was also a party respondent. On culmination of the arbitration proceedings, an award was rendered by Arbitrator on 11.11.2011, whereby, a liability has been harnessed upon the respondents to Arbitration proceedings to the tune of Rs.3,20,316/-. Since the said award was not honoured by respondent No. 4, as well as the petitioner and other judgment debtor, respondent No. 3 put the award to execution by filing Misc. Case No. 39 of 2012 before District Judge, Nainital. In the

said execution proceeding, an order was passed on 3rd August, 2012, by 1st Additional District Judge, Nainital, whereby, he after recording finding that nothing is left to be decided in the execution proceedings, has referred the recovery proceedings for executing the award, to be made through Collector by issuing the recovery citation. It is on 18th August, 2017, that the recovery citation was directed to be issued by the Collector and ultimately 2A Forms 69 U/R 236 of 2A and LR Rules has been issued on 6th September, 2017, which has been put to challenge by the petitioner in the present writ petition.

The sole ground which has been agitated by the petitioner is that no recovery proceedings of the amount in the question sought to be recovered by the recovery citation dated 6th September, 2017 for enforcing the award, could have been made as arrears of land revenue for the reason, it was a commercial loan which was extended by the respondent Nos. 3 to respondent No.4.

The learned counsel for the petitioner has annexed a copy of the judgment rendered by the Coordinate Bench of this Court as passed in Writ Petition No. 1637 (M/S) of 2012, wherein, the coordinate Bench of this Court vide its judgment dated 17th December, 2014 has held that the amount sought to be recovered u/s 3 of U.P. Public Moneys (Recovery of Dues) Act, 1972 cannot be pressed in service for recovery of dues as arrears of land revenue, more particularly, when the loan as extended therein was a commercial loan for establishment and running a brick-klin. The said ratio as propounded by the Coordinate Bench would not be applicable in the instant case as it is not a

recovery contemplated u/s 3 of U.P. Public Moneys (Recovery of Dues) Act, 1972, but rather the recovery sought to be made in pursuance to an execution of an award passed under Arbitration and Conciliation Act, 1996 which is to be executed as a decree by the Civil Court.

This Court is constraint not to entertain and accept the arguments as extended by the learned counsel for the petitioner for two reasons, firstly, the award dated 11.11.2011 in which the petitioner was party has attained the finality as the same has not been challenged. Secondly, the execution order as passed by the 1st Addl. District Judge on 3rd August, 2017 referring the recovery to be made by issuance of recovery certificate too has yet again not been challenged and it has attained finality. Consequently, the Executing Court had rightly issued direction to the Collector to initiate the proceedings for the amount as directed to be recovered under the award dated 11.11.2011, arising from an execution case.

In view of Section 36 of the Arbitration and Conciliation Act 1996, since the execution of an award is to be made by invoking the provisions contained Order 21 of the C.P.C., hence, the recovery citation as issued is a consequence of the proceedings under Order 21 Rule 11 of the C.P.C. Hence, I find no reason to interfere in the writ petition. The writ petition is accordingly dismissed in limine.

No order as to costs.

(Sharad Kumar Sharma, J.)

28.03.2018

Shiv