

Court No. - 40

Case :- WRIT - C No. - 32109 of 2023

Petitioner :- Gurudev Mishra

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Gyanendra Prakash Srivastava

Counsel for Respondent :- C.S.C.,Ramesh Chandra Dwivedi

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and Sri S.C. Upadhyay, learned Standing Counsel for State respondents.

2. By means of instant writ petition the petitioner has prayed for certiorari quashing the impugned order dated 22.12.2020 and penalty recovery warrant dated 24.12.2022 passed by learned Additional Chief Judicial Magistrate, Court No.19, Deoria in Execution Case No.01 of 2019 (Shrikant Vs. Gurudev). It is further prayed that a direction for mandamus may also be issued to the respondent authority to receive the dues of the amount from the petitioner in easy and equal installments, without imposing any interest and collection charges over the petitioner.

3. When the matter was taken up on 03.10.2023, this Court has proceeded to pass following order:-

"1. Heard learned counsel for the petitioner and Sri S.C.Upadhyay, learned Standing Counsel for the State-respondent.

2. The present writ petition has been preferred assailing the order impugned dated 22.12.2020 and penalty recovery warrant dated 24.12.2022 passed by learned Additional Chief Judicial Magistrate, Court No. 19 Deoria in Execution Case No. 01 of 2019 (Shrikant Vs. Gurudev) Annexure No. 1 & 2 to the writ petition).

3. The petitioner claims to be proprietor of firm known as Aparna Traders, which is running business of transaction of rice and flour and other things. In the year 2010, one agreement executed between the petitioner and one Shrikant Mishra and according to this agreement, petitioner purchased 350 quintal wheat and 290 quintal paddy and he paid all dues in May 2011. It appears that Shrikant Mishra filed a complaint u/s 138 N.I.Act as three cheques amounting total Rs. 56,85,000/- were bounced and learned Chief Judicial Magistrate convicted the petitioner for imprisonment of two years and Rs. 80,00,000/- fine and in case of default in payment of fine, three months additional imprisonment vide order dated 1.4.2017. Against the said order, petitioner filed an appeal before the Additional Sessions Judge, Court No. 2 Deoria, which was dismissed vide order dated 23.2.2018. Against the said order, petitioner filed a Criminal Revision No. 1740 of 2018 before this Hon'ble Court,

which is still pending and it has also been informed that there is no stay order in the aforesaid proceeding. Once the order dated 1.4.2017 has not been complied, Shrikant Misha filed an Execution Case no. 1 of 2019 before the learned Additional Chief Judicial Magistrate Court No. 19 Deoria, which was allowed vide order dated 22.12.2020 directing the second respondent to recover the amount of Rs. 79 lakh from the petitioner. Thereafter, the learned Additional Chief Judicial Magistrate Court No. 19 Deoria issued a penalty recovery warrant on 24.12.2022. Pursuant to the order dated 22.12.2020, the respondent no. 3 issued auction notice on 14.10.2022 and the date was fixed for auction on 28.10.2022 at 11 am.

4. In this backdrop, learned counsel for the petitioner fairly states that in response to the aforesaid order, the petitioner had already deposited Rs. 75,50,000/- before the respondent no.3 and he is ready and willing to deposit rest of the amount to the tune of Rs. 3.5 lakh plus recovery charges (amounting Rs. 3 lakh) in case some breathing time is accorded by this Court. Learned Standing Counsel has no objection to the same.

5. Petitioner is permitted to implead Shrikant Mishra forthwith.

6. Considering the facts and circumstances of the case, we deem it appropriate that in case the petitioner deposits the balance amount on or before 30.10.2023, the respondents are restrained to auction the property in question till the next date of listing.

7. Put up this matter on 20.11.2023 as fresh. On the next date of listing, the Court would consider for release of the amount in favour of the newly impleaded respondent."

4. Admittedly, in response to the leave accorded by this Court vide order dated 03.10.2023, the amount in question has not been deposited.

5. Once the Court has declined to entertain this writ petition, learned counsel for the petitioner states that this writ petition may be dismissed as withdrawn leaving it open to the petitioner to press the relief before appropriate forum/Court.

6. The writ petition is, accordingly, dismissed as not pressed with the aforesaid leave.

7. Interim order granted on 03.10.2023 stands vacated.

Order Date :- 13.12.2023
S.P.