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Court No. - 3

Case :- WRIT - C No. - 16263 of 2022

Petitioner :- Asif Khaliq

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

Counsel for Petitioner :- Jahangir Haider

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

Heard Sri Jahangir Haider, learned counsel for the petitioner and Sri Amit Manohar, learned Additional Chief Standing Counsel for the respondents.

This writ petition has been filed praying for the following reliefs:-

"i. Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to restore the possession of the petitioner's factory seized machine situated at S-115 Harsha Compound, Site-2, Loni Road, Industrial Area Mohan Nagar, District Ghaziabad, in favour of the petitioner to enable him to run his factory smoothly."

Learned counsel for the petitioner submits that the petitioner neither took any loan from M/s Hero Fincorp Limited nor mortgaged his property nor stood as guarantor for any one and yet, his machineries located at S-115, Harsha Compound Site-2, Loni Road, Industrial Area, Mohan Nagar, District Ghaziabad have been seized by respondent no. 2 and an order dated 28.12.2021 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been passed by the Additional District Magistrate (Finance and Revenue), Ghaziabad in Case No. 7749 of 2021 (Hero Fincorp Limited Vs. M/s Zeb Designers and others) which is wholly without authority of law, arbitrary and illegal and, therefore, it deserves to be quashed.

Learned counsel for the petitioner on being questioned, states that the loan was taken by his wife, namely, Shabih Asif (S.Asif) who is proprietor of M/s Zeb Designers and location of her factory is 33/312, site-2, Loni Road, Industrial Area, Mohan Nagar, Ghaziabad. **He further states that the seized machineries etc. belongs to M/s Umbrella Corporation which is a proprietorship concern of the petitioner and not of his wife or M/s Zeb Designers.**

We have perused the writ petition and we find that the petitioner has neither stated in the writ petition that the machinery in

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question belongs to M/s Umbrella Corporation nor he has disclosed that the proprietor of M/s Zeb Designers is his wife nor he disclosed any GST registration of alleged M/s Umbrella Corporation nor has filed any document indicating registration of M/s Umbrella Corporation under the CGST/UPGST Act or under the Factories Act nor any proof of seized machinery belonging to him have been filed.

In the writ petition, no papers has been filed to indicate that there actually exist a proprietorship concern in the name and style of M/s Umbrella Corporation. On the contrary, on perusal of paragraph no. 11 of the writ petition, we find that the petitioner has stated to have made representations dated 28.4.2022 and 2.5.2022 to the Additional District Magistrate (Finance and Revenue), Ghaziabad and copy whereof has been filed as Annexure nos. 1 and 2. Perusal of Annexure-2 to the writ petition shows that **it was sent by Asif Zaidi** through e-mail and as per schedule-1 annexed to the deed of guarantee appearing at page 84 of the personal affidavit of Additional District Magistrate (Finance and Revenue) dated 10.1.2023 who is the son of the petitioner and his full name is Ashar Asif Zaidi and the petitioner's full name of Asif K. Zaidi. Learned counsel for the petitioner has stated that full name of petitioner is Asif Khalik Zaidi. The petitioner has very conveniently concealed all these material facts in the writ petition.

Thus, the writ petition has been filed making false averments and suppressing material facts.

In the case of **United India Insurance Company Ltd. V. B.Rajendra Singh and others, JT 2000(3) SC.151**, considering the fact of fraud, Hon'ble Supreme Court held in paragraph 3 as under :

"Fraud and justice never dwell together". (Frans et jus nunquam cohabitant) is a pristine maxim which has never lost its temper overall these centuries. Lord Denning observed in a language without equivocation that "no judgement of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything"(Lazarus Estate Ltd. V. Beasley 1956(1)QB 702). (Emphasis supplied by the Court)."

In the case of **S.P. ChengalVaraya Naidu (dead) by L.Rs Vs. Jagannath (dead) by L.Rs and others, AIR 1994 SC 853**, the Hon'ble Supreme Court held in para 7 as under :-

"7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that

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"there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

We find that the petitioner has approached this Court by suppressing and concealing material facts. Therefore, the writ petition deserves to be dismissed with exemplary cost.

For all the reasons aforestated, the writ petition is **dismissed** with a cost of Rs. One lac which shall be deposited by the petitioner with the High Court Legal Services Committee within two weeks from today. A copy of this order shall be sent by the learned Standing Counsel to the Additional District Magistrate (Finance and Revenue), Ghaziabad within a week who shall ensure compliance of this order.

Since, the financier i.e. M/s Hero Fincorp Limited has not been made party in the present writ petition, therefore, we direct the Additional District Magistrate (Finance and Revenue), Ghaziabad to inform about this order to the aforesaid M/s Hero Fincorp Limited.

Order Date :- 11.1.2023
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