consideration or for improper puposes and neither is it shown that any material fact which was required to be considered has been left out of consideration or that irrelevant and inconsequential factors have been taken into account. There is no breach of principle of natural justice inasmuch as the representation of the petitioner which was directed to be disposed of by the respondent—authorities by order dated 18th March, 2002 by this Court passed in earlier civil writ petition No. 4615 of 2002 filed by the petitioner—Association, has been duly considered and disposed of in terms of order dated 18th June, 2002 (Annexure p-4). Besides, the decision to earmark the 10 marla plots in the area which the petitioner—Association claims they are entitled to use as open space is not shown to be one which an authority could not have reached on the basis of material available before it, in fact, the decision to earmark 10 marla plots was taken as far back as on 6th August, 1975.

(14) Therefore, in the circumstances noticed above, we find no merit in this writ petition and the same is hereby dismissed leaving the parties to bear their own costs.

R.N.R.

Before S.S. Nijjar & M.M. Kumar, JJ

M/S INDERJIT POULTRY FARM & OTHERS—*Petitioners*

Versus

STATE BANK OF PATIALA & OTHERS—*Respondents*

C.W.P. NO. 15870 OF 2002

2ND DECEMBER, 2002

Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—0.23 Rl.1—Non-Payment of loan amount—Debt Recovery Tribunal allowing the claim of the Bank—Appellate Tribunal rejecting the claim of the petitioner for being given the benefit of the revised RBI guidelines—Challenge in the High Court—Withdrawal of the writ petition—Whether another writ petition on the same cause of

action is maintainable—Held, no—Petitioners guilty of concealing material facts, thus, not entitled to be heard on merits—Writ dismissed with costs.

Held, that cause of action arose to the petitioners on the passing of the order dated 8th December, 1998 by the Debt Recovery Tribunal, thereafter, the cause of action arose to the petitioners when order dated 30th March, 2001 was passed rejecting the claim of the petitioners for being given the benefit of the revised RBI guidelines dated 27th July, 2000. The claim of the petitioners having been rejected by the Appellate Tribunal, the petitioners filed CWP No. 6827 of 2001. This was dismissed as withdrawn. No new cause of action has arisen to the petitioners to enable them to file the persent writ petition. The petitioners are clearly guilty of "*suppressio veri*" and "*suggestio falsi*". Therefore, the petitioners are not entitled to be heard on merits.

(Para 11)

JUDGEMENT

S.S. NIJJAR, J.

(1) The petitioners seek the issuance of a writ in the nature of mandamus directing the respondents to consider the case of the petitioners under the guidelines issued by the Reserve Bank of India,—*vide* letter dated 27th July, 2000. The petitioners further pray for a direction to the respondents to accept the money from the petitioners in NPAS account according to the revised guidelines of the Reserve Bank of India. After hearing the counsel for the petitioners on 1st October, 2002, this Court issued notice of motion to the respondents for 2nd December, 2002. In the meantime, operation of the order dated 31st July, 2002 for attachment of the property of the petitioner was stayed on the condition of deposit of a sum Rs. 4.50 lacs within one month.

(2) The petitioners had taken a business loan from respondents no. 1 and 2 State Bank of Patiala. Due to non-payment of the instalments, the respondents—Bank filed a suit for recovery of Rs.

13,37,530 before the civil court at Jagadhri on 11th January, 1995. The suit was transferred to the Debt Recovery Tribunal. By order dated 8th December, 1998, the Debt Recovery Tribunal decreed the claim of the respondents—Bank for a sum of Rs. 9,71,297 together with future interest till the amount is realised. The petitioners made a claim to repay the loan under the revised guidelines issued by the Reserve Bank of India dated 27th July, 2002. This request was not accepted by the respondents—Bank. The petitioner filed an appeal before the Debt Recovery Appellate Tribunal at Mumbai which was ultimately transferred to the Appellate Tribunal at Delhi. Respondents no. 1 and 2 appeared before the Appellate Tribunal and stated that the case of the petitioners is not covered under the RBI guidelines. The respondents—Bank further stated that the petitioners can approach the respondents—bank under the general scheme of compromise. On 30th March, 2001, the Appellate Tribunal disposed of the application filed by the petitioners for direction to the respondent—Bank for settlement as per RBI guidelines on or before 31st March, 2001, with the observations that whatever the petitioners are saying in the application may be considered when the appeal is taken up on merits. Aggrieved against the aforesaid order, the petitioners filed Civil Writ Petition No. 6827 of 2001. On 25th February, 2002, the writ petition was dismissed as withdrawn with the following orders :—

"Mr. Ravinder Jain, Advocate

Mr. C.B. Goel, Advocate for respondents no. 1 & 2

The petitioner is aggrieved by the order dated 30th March, 2001 passed by the Debt Recovery Appellate Tribunal, Delhi.

Mr. Jain after having argued for some time, has made a prayer for permission to withdraw the writ petition to enable the petitioners to raise an appropriate plea before the Tribunal.

Allowed as prayed for, Dismissed as withdrawn. No. costs.

25th February, 2002 Sd/-J.L. Gupta, Judge

Sd/-N.K. Sud, Judge"

(3) The prayer Clause Nos. 3 and 4 made in the aforesaid Writ Petition are identical to prayer Clause Nos. 3 and 4 in the present writ petition which are as follows :—

"(iii) The respondents are directed to consider the case of petitioner under the purview of RBI 's guidelines issued by the Reserve Bank of India,—*vide* letter dated 27th July, 2000.

(iv) To issue appropriate writ, order or directions especially a writ of mandamus directing the respondents to accept the money from the petitioner in NPAs account according to the revised guidelines of the Reserve Bank of India.

(4) As noticed earlier in CWP No. 6827 of 2001, a prayer had been made for quashing the order dated 30th March, 2001 passed by the Appellate Tribunal, Delhi. This prayer was in prayer clause II of the aforesaid writ petiton. In the present writ petition, prayer clause II is for the issuance of writ of mandamus directing the respondents not to take any execution proceedings during the pendency of the appeal of the petitioners.

(5) From the perusal of the above, it becomes apparent that cause of action arose to the petitioners when the Debt Recovery Tribunal, Jaipur passed an order on 8th December, 1998 in favour of the respondents-Bank stating that the respondent-Bank is entitled to recover a total sum of Rs. 9,71,297 with future interest from 11th January, 1995 till its realization. Having withdrawn the CWP No. 6877 of 2001, the petitioners have again challenged the order dated 30th March, 2001 passed by the Appellate Tribunal holding that the petitioners do not fall under the purview of the RBI guidelines. The petitioners have also challenged the order of attachment passed by the Recovery Officer II. D.R.T., Chandigarh on 31st July, 2002. The facts narrated above would show that the relief sought in the present writ petition is identical to the relief which was sought by the petitioners in CWP No. 6827 of 2001. In paragraph 18 of the present writ petition, it is stated that the petitioner has not filed such or similar writ petition earlier in this Court or in the Hon'ble Supreme Court of India.

(6) Written statement has been filed by respodents No. 1 and 2 and a preliminary objection has been taken that the writ petition

deserves to be dismissed with exemplary costs as the petitioners have deliberately/intentionally concealed material facts from this Court regarding filing of the earlier Writ Petition No. 6827 of 2001 which was dismissed as withdrawn on 25th February, 2002. The claims of the petitioners have also been contested on merits.

(7) Mr. C.B. Goel submits that the writ petition deserves outright dismissal with heavy costs. We find force in the submission made by the learned counsel. A perusal of the order passed by the Division Bench clearly shows that the petitioners chose to withdraw the writ petition. Having exercised the aforesaid option, it is not open to the petitioners to file a second writ petition on the same cause of action.

(8) It is settled propositioin of law that when a writ petition is dismissed as withdrawn, second writ petition in respect of the same cause of action under Article 226 of the Constitution of India is not maintainable, unless permission to institute a fresh petition on the same cause of action is taken when the earlier writ petition is withdrawn. In the case of ***Teja Singh*** **Vs.** ***The Union Territory of Chandigarh and others(1),*** a Full Bench of this court has clearly held as follows:

"28. xx xx xx xx xx xx xxx

(9) That provisions of Order 23, rule 1 of the Code of Civil Procedure would apply to the writ proceedings and that a petition which has simply been got dismissed as withdrawn would be a bar to the filing of a second petition on the same facts and in respect of the same cause of action."

(9) In the case of ***Sarguja Transport Service*** vs. ***State Transport Appellate Tribunal, Gwalior and others(2),*** the Supreme Court has held as follows:-

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ

(1) 1981(1) SLR 274 (F.B.)
(2) AIR 1987 SC 88

petition in the High Court under that Article. On this point, the decision in Daryo's case *(supra)* is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again, while the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to *res judicata,* the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. . . . . ."

(10) In view of the above enunciation of law, we have no hesitation in holding that the present writ petition has to be dismissed as being not maintainable.

(11) Even otherwise, we are of the considered opinion that the petitioners do not deserve to be heard on merits. As noticed earlier, the petitioners did not disclose in the present writ petition the fact of dismissal of earlier CWP No. 6827 of 2001 as withdrawn. Therefore, there is substance in the submission of Mr. Goel that the present writ petition deserves to be dismissed at the threshold as the petitioners have not come to court with clean hands. The petitioners have tried to over-reach this Court. Relying on the statements made in the present writ petition, this Court issued notice of motion on 1st October, 2002 and stayed the auction of the assets of the petitioners in pursuance of the execution proceedings. Had the dismissal of the earlier writ petition been brought to the notice of this Court, the order dated 1st October, 2002 granting interim relief may well not have been passed. It has been repeatedly held by the courts that all parties seeking

discretionary relief under Articles 226/227 of the Constitution of India must disclose to the court all the relevant facts which may have a bearing on the ultimate decision of the writ petition. Undoubtedly, cause of action arose to the petitioners on the passing of the order dated 8th December, 1998 by the Debt Recovery Tribunal. Thereafter, the cause of action arose to the petitioners when order dated 30th March, 2001 was passed rejecting the claim of the petitioners for being given the benefit of the revised RBI guidelines dated 27th July, 2000. The claim of the petitioners having been rejected by the Appellate Tribunal, the petitioners filed CWP No. 6827 of 2001. This was dismissed as withdrawn. No new cause of action has arisen to the petitioners to enable them to file the present writ petition. The petitioners are clearly guilty of "*suppressio veri*" and "suggestio falsi". Therefore, the petitioners are not entitled to be heard on merits. In similar circumstances, the law has been enunciated by a Full Bench of this Court in the case of ***Chiranji Lal and others*** vs. ***Financial Commissioner, Haryana and others (3).*** It has been held therein as follows :—

> "10. In the aforesaid context, we cannot but hold that there has been *mala fide* and calculated suppression of material facts which, if disclosed would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both the interim and ultimate relief claimed. We categorically reject the plea of the writ petitioner that the failure to mention all these material facts clearly within their knowledge was either inadvertent or was occasioned by any *bona fide* omission.
>
> ....
>
> 14. Agreeing with the long line of precedent and affirming a rule which appears to us hoary by usage, we hold that the writ petitioners in the present case have by their own conduct disentitled themselves to the relief which they sought to claim. We dismiss the writ petition with costs on this ground alone without adverting to merits."

(3) 1978 Vol. LXXX, The Punjab Law Reporter 582

(12) Similar view has been expressed recently by a Division Bench of this Court in the case of ***Naresh Kumar*** vs. ***The State of Haryana and others,*** (CWP No. 5921 of 2002) decided on 11th September, 2002. The Division Bench of this Court observed as follows:-

> "Every citizen has a right to approach the Court and if Court might find information of fundamental or civil rights of such citizen, it is duty bound to come to his rescue. The courts in this country, right from the court of Subordinate Judge to the Apex Court, are open to all. This fundamental right of a citizen to have access to all legal forums constituted in the country cannot, however, be permitted to be abused. Whereas, the court is duty bound to interfere at all levels, when fundamental or civil rights of a citizen are infringed, it is also duty bound, in our view, to show a citizen, who abuses the process of law, the exit-door and also to mulct him with heavy costs. Reference in this connection may be made to Division Bench Judgement of this Court in *Jawan Khan and others,* vs. *Mewa Singh and others.* LPA No. 1166 of 1988 decided on 28th March, 2001, a reasoned order in *Nathu Ram and others,* vs. *State of Haryana and others.,* CWP No. 16496 of 2001 decided on 10th July, 2002 as also Division Bench judgment in *Ram Singh and others.,* Vs. *State of Haryana and others.,* CWP No. 7751 of 2002 decided on 2nd August, 2002. The present is a case where petitioner needs such a treatment. In the garb of challenging the vires of the Act of 1999, a totally made up and concocted cause of action has been projected.
>
> In view of what has been said above, we dismiss this petition with costs quantified at Rs. 25,000 which shall be payable by the petitioner to the Improvement Trust, which in turn, would remit half of the costs to the allottee of the plot in question, namely, Subash Chand.

If the costs are not paid within two months from today, the Deputy Commissioner (Collector), Karnal, shall recover the same as arrears of land revenue and pay it to the Improvement Trust and Subash Chand, allottee of the plot in equal share."

(13) In the case of ***S.P. Chengalvarava Naidu (dead) by L.Rs.*** vs. ***Jagannath (dead) by LRS. and others(4).*** *It has been held* as follows:-

"**Kuldip Singh, J.** :—"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three countries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree-by the first court or by the highest court-has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

. . . .

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 "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

(4) AIR 1994 SC 853

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 whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

14. Keeping the aforesaid propositions of law in view, we are of the considered opinion that the petitioners do not deserve to be heard on merits. The writ petition is dismissed with costs. Costs Rs. 10,000

R.N.R.

3156 HC—Govt. Press, U.T., Chd.