

(2015) 07 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 1748 of 2013

Chhaya Atul Pandya

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : (2015) 323 ELT 521

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : R.B. Pardesi, N.P. Sinha and A.M. Khave, Advocates i/b, KRP Legal, for the Appellant; A.S. Rao, Advocates for the Respondent

Judgement

1. We have heard Mr. Pardesi learned counsel appearing on behalf of the petitioner and with his assistance we have perused the petition and affidavit in reply. The argument is that the order of attachment of the immovable property is purportedly to attach not the property of the defaulter of the duty/penalty amount under the Customs Act, 1962 but, that of a third party. Meaning thereby, the property of a third party stands attached in terms of the order. Even if the order of attachment refers to the petitioner's husband Mr. Atul Pan-dya as a defaulter and further makes a reference to the Gift Deed executed by him such acts on the part of the authorities are patently wrongful and illegal and affects the right, title and interest of the petitioner in the immovable property that is independent of the defaulter.

2. Our attention is invited to the rules enabling the levy of attachment on property movable and immovable of the defaulter and the procedure to recover Government dues. That is set out in the Customs (Attachment of Property of Defaulters for Recovery of Govt. Dues) Rules, 1995. Reliance is also placed on certain judgments of this Court.

3. We are unable to agree with the petitioner's counsel that the petitioner has no remedy to question such acts on the part of the authorities. In the present case,

it is not as if there is no reference to a document styled as "Gift Deed" in the attachment order, copy of which is Annexure H (Page 114). The stand of the Department is that it is the act of the defaulter and on the eve of recovery proceedings and therefore, execution of the Gift Deed and its subsequent registration will not in any manner affect the power of the authorities to recover Government dues in accordance with law.

4. On the other hand, it is urged on behalf of the petitioner that there are no recovery proceedings against the petitioner. The proceedings may be against her husband and he may be an alleged defaulter but, that does not enable attaching the property of a distinct person like the petitioner. Secondly, the right, title and interest in the immovable property vests in the petitioner inter alia by execution and registration of the Gift Deed.

5. We are unable to resolve such issues and which are highly disputed. They touch the right, title and interest of a person in the immovable property. It is not as if there are no remedies available to question the alleged wrongful act and to establish that it not legal and valid. By filing a suit in a competent Civil Court, claiming right title and interest in the immovable property and impleading necessary and proper parties the petitioner can seek such reliefs as are permissible in law. Once that is a forum and a remedy which is alternate, effective and efficacious, then, a writ petition to resolve the disputed questions of the above nature cannot be entertained.

6. We dispose of this Writ Petition by keeping open all contentions of both sides. The petitioner can seek such reliefs as are permissible in law including that the continuing attachment gives an apprehension that the immovable property may be sold and disposed of. On such apprehensions interim reliefs can be applied for.

7. The petitioner can also seek such benefit as is available in law particularly, under Section 14 of the Limitation Act, 1963 so that the time spent in prosecuting this writ petition can be claimed to be excluded for the purpose of computing the period of limitation for filing a suit in a competent Civil Court. We keep open all questions including the jurisdiction of the Court and maintainability of the proceedings. Writ petition is disposed of.