(2009) 11 KL CK 0029

In the High Court Of Kerala

Case No : W.A. No''s. 2261 and 2381 of 2009

C.K. Sunnuy — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 53

Citation : (2010) 30 VST 644

Hon'ble Judges : V.K. Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.M. Varghese, for the Appellant; Mohammed Raiq, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Writ appeals are filed against the judgment of the learned single judge holding that the Sales Tax Appellate Tribunal has no powers to entertain the claim of the appellant that he is an indigent person eligible to file appeal under Order XLIV of the CPC without payment of court fee. We have heard counsel appearing for the appellants and the Government Pleader appearing for the respondents.

2. Counsel for the appellants has relied on the decision of the Supreme Court in State of Haryana Vs. Smt. Darshana Devi and Others, and contended that Order XXXIII as well as Order XLIV giving powers to civil court to permit filing of suits and appeals by parties as indigent persons without payment of court fee, apply to Sales Tax Appellate Tribunal. On going through the judgment above referred, we find that it is rendered in the context of a claim petition filed under the M.V. Act before the MACT without payment of court fee. The Supreme Court held that since the MACT has the trapping of a civil court, it has all the power under Order XXXIII contained in the CPC. However, we do not think the decision applies here because determination of compensation under the MV Act by the MACT is almost in the same manner civil court decides civil suits. In fact civil judges are notified

as MACTs. and the purpose of constitution of the Tribunal is for early disposal of cases. In fact, prior to constitution of MACTs, suits for damages under the MV Act were decided in civil suits by civil courts. However, so far as the Sales Tax Act is concerned, it is a statute providing for levy and collection of tax and the powers of the authorities are found in the statute itself. Section 53 gives only limited powers to the appellate authority, revisional authority and the Tribunal. For easy reference we extract hereunder the said section:

53. Power to summon wtnesses and cause production of documents.--An assessing authority or an appellate or revising authority (including the Appellate Tribunal) shall, for the purposes of this Act, have all the powers conferred on a court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely,--

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation ; and

(b) compelling the production of any document.

3. It is clear from the above provisions that the powers of the civil court to be exercised by authorities under the statute pertain only to summoning and enforcing the attendance of any person and examining him on oath or affirmation and for compelling production of documents. Since the statutory authorities under the KGST Act are not conferred with any powers of civil court contained in Order XXXIII and Order XLIV of the CPC, none of the statutory authorities including the Tribunal has the authority to dispense with payment of court fee. We therefore confirm the judgment of the learned single judge and dismiss the appeals.

