(1989) 12 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No. 9846 of 1988

Gayatri Devi APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 05-12-1989

Acts Referred:

Income Tax Act, 1961 — Section 226, 226(3)

Citation : (1990) 186 ITR 1132

Hon'ble Judges : M. Srinivasan, J

Bench : Single Bench

Advocate : R.L. Ramani, for the Appellant; C.V. Rajan, for the Respondent

Judgement

1. This writ petition is directed against Income Tax Department for restraining them from exercising their powers u/s 226(3) of the Income Tax

Act, 1961. According to the Department, a sum of Rs. 35,475 was due from the petitioner''s mother by name Annapoorani by way of tax arrears

payable by Amudham Enterprises in which she was a partner. It is not in dispute that under the dissolution deed of the partnership, the petitioner''s

mother had to discharge the Income Tax liability. According to the Department, the petitioner herein who is the daughter of the assessee was liable

to pay sum of Rs. 29,367.90 to her mother as she had utilised the amount belonging to the mother which was kept in fixed deposit with the

Danalakshmi Bank Ltd., under account No. 39729/9/87 dated February 13, 1987. The Income Tax Department called upon the bank to pay the

amount to the Department towards the arrears of tax payable to pay petitioner''s mother. The bank sent a reply to the effect that the said amount

was kept as security for the loan availed of by the petitioner which was under the vehicle loan account No. 10/87 for a sum of Rs. 75,000

2. The Department sent a notice section 226(3) on February 23, 1988, the receipt of which is denied by the petitioner herein. The petitioner has

filed this writ petition when proceedings where initiated by the Department to recover the amount from the bank.

3. After hearing counsel on both sides, I am of the view that the following order will meet the ends of justice : Whether the petitioner has received

notice u/s 226 or not, the Department shall now hold an enquiry as to whether the petitioner owes the amount to her mother was contended by the

Department. The first respondent shall commence the enquiry on December 20, 1988, on which date the petitioner shall appear before the first

respondent. It is open to the first respondent to fix convenient date for further enquiry after ascertaining the same from the petitioner herein. The

petitioner is entitled to produce all the relevant documents and prove that she does not owe any money to her mother and that the amount in

question which was in the fixed deposit of the mother''s account cannot be attached by the Income Tax Department.

4. If the first respondent comes to a conclusion against the petitioner then it will be open to the first respondent to take appropriate proceedings.

The petitioner can also seek remedies available against the order if it is against her. It is brought to my notice that after an interim injunction order

was made by this court on August 29, 1988, a sum of Rs. 25,000 was deposited by the petitioner in her bank account and when the petitioner

issued a cheque for Rs. 23,375 to one Mr. C. Panchanathan, the bank returned the cheque on the ground that the Income Tax attachment order is

in force. Therefore, the cheque was not cleared.

5. In order to safeguard the interests of the Department as well as the petitioner, I direct that the petitioner shall keep a sum of Rs. 25,000 in the

same bank account without withdrawal for a period of four weeks from today. The first respondent shall conclude the enquiry within that period.

Learned counsel for the petitioner gives an assurance that the petitioner will co-operate with the Department and see that the enquiry is concluded

within the time prescribed herein. The writ petition is allowed on the above terms to the extent indicated above and there will no order as to costs.

