
(1939) 02 BOM CK 0024
In the Bombay High Court
Case No : Appeal No. 19 of 1936

GOVERNOR-GENERAL IN COUNCIL

APPELLANT

Vs

CHOTALAL SHIVDAS and ANOTHER.

RESPONDENT

Date of Decision : 20-02-1939

Acts Referred:

Income Tax Act, 1961 — Section 46(2)

Citation : (1939) 7 ITR 411

Judgement

This is a second appeal from the decision of the Assistant Judge of Dhulia. The controversy is in regard to the prerogative claimed by the Crown, first in regard to the priority for recovery of Income Tax due from an assessee, and secondly, in regard to the procedure for enforcing that priority. The material facts are these : For the year 1933-34 there was default committed by the assessee, who is now respondent No. 2, in making payment of the Income Tax in that year. The first respondent was an unsecured creditor of the assessee, and he obtained a decree in 1932 against the latter in execution of which he obtained attachment of assessee's property which was liquidated and the proceeds brought into Court. Thereupon the Income Tax Officer, who had already taken steps u/s 46(2) of the Income Tax Act (XI of 1922) by forwarding a certificate under his signature to the Collector, specifying the amount of arrears due from the assessee, to enable the Collector to recover the same as if it were an arrear of land revenue, requested by letter the Subordinate Judges, in whose Court the attached amount of the assessee was lying, to recognize the priority of the claim of the Crown in respect of the Income Tax arrear. The first letter was addressed to the Subordinate Judge on the 9th of January 1935. This is what he wrote : "I hereby prefer a claim of Rs. 347-14-0 being the amount of tax pending against him (assessee) for the year 1933-34 and request you to be so good as to pay up the amount at your earliest convenience". That might properly be regarded as an application to the Court to distribute the amount. The Court thereupon after further correspondence and after being satisfied in regard to the priority of the claim of the Crown ordered the payment of the Crown dues before those of the

decree holder. Against that order the latter preferred an appeal. The learned Assistant Judge reversed the order holding that the form adopted in making the application was irregular and illegal, and could not properly be acted upon by a Civil Court in recognition of the priority claimed. Against that order Government have preferred this second appeal.

The prerogatives claimed by the Crown are really two : first priority, and secondly special procedure for enforcing that priority. On the first point there is considerable body of authority to hold that the Crown has priority in respect to its debts - (See *Manikkam Chettiar v. Income Tax Officer, Madura South*, *Soniram Rameshur v. Mary Pinto*, and *Gayanoda Bala Dassee v. Butto Kristo Bairagee*). In these cases it was held that the Crown has priority over unsecured creditors in respect to the payment of debts. It was also held that the Court can order payment of a Crown debt due by the debtor, on the application of the Crown without a formal attachment being issued, where there are funds in Court belonging to the debtor (see also *Deputy Commissioner of Police v. Vedantam*.) There is no doubt that the arrear of unpaid Income Tax due by the assessee is a debt due to the Crown, and therefore a Crown debt and as such the debt must have precedence over all other debts. Consequently in the competition between the Crown and the subject in respect of payment of their respective debts of equal degree Crowns right must prevail.

That being the legal position the question is whether the procedure adopted by the Crown through its officer was illegal and debarred the Crown on that account alone from recovering the debt, or rather enforcing the priority. No authority has been cited as to what form the procedure should take in the matter of claiming payment out of the funds in the hands of a Civil Court by the Crown of its debt. The first ground of objection to the claim is based upon the provisions of section 46(2) of the Indian Income Tax Act, which it is urged are exhaustive. The second ground of objection is that the Court has a right to specify a crown debt in priority or give preference to it over another debt only upon an application made according to the forms recognised by the Civil Procedure Code. On the first point the argument is that inasmuch as Section 46 of the Income Tax Act provides certain specific modes for the recovery of arrears of Income Tax, those modes alone should be adopted by the Crown. That view in my opinion is erroneous. The position was fully examined in *Manikkam Chettiar v. Income Tax Officer, Madura South*, and it was held that those provisions were not exhaustive, and that the Court had power to order payment of the amount on mere application. If I may say so with respect, that view seems to be correct. It may be noted that Section 73, Sub-section (3), of the CPC states that nothing in that section affects any right of the Government. By necessary implication there is express reservation of the right to claim precedence for a Crown debt, and the Court in whose hands the assets are lying is bound as a court of equity and justice, to respect the priority of Government if it is brought to its notice.

In the above connection it will be interesting to compare the phraseology of the

proviso to Order XXI, rule 52, of the Civil Procedure Code. The words "or otherwise" show that in the matter of recognition of priority of the Crown debt the Courts jurisdiction to do what is just and proper is unhampered by any forms of procedure and it can withhold payment to the attaching creditors without simultaneous attachment by any claimant and determine the claim to priority between the decree holder and any other person including the Crown. There is nothing in the code to prevent the Court from treating any letter of request as an application to further substantial justice and from exercising the inherent powers vested in it to do what is just and right. As the priority is there I do not think any technical irregularity, if any, in making the claim should come in the way of the Courts discharge of its duty. In that view of the matter I think the appeal must be allowed, the order of the Assistant Judge set aside and that of the first Court restored with costs in the two appeal Courts.

No order on the Civil Revisional Application No. 373 of 1937.

Appeal allowed.