(1997) 07 DEL CK 0042

In the Delhi High Court

Case No : Interim Application No. 2547 of 1993

H.C. Shastri APPELLANT

Vs

Dolphin Canpack (P) Ltd. and Others RESPONDENT

Date of Decision : 01-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Income Tax Act, 1961 — Section 226, 226(3)

Citation : (1997) 4 AD 812 : (1997) 67 DLT 665

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : L.R. Gupta, Mahendra Rana and Rajendra, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) A letter bearing No. TRO-15/96-97/99 addressed to the Registrar has been put up before the Court. Let this letter be registered as an Interim Application.

(2) Learned Standing Counsel for the department urged that there is an outstanding recovery to the extent of Rs. 7,27,926.00 from M/s. Dolphin Canpack Pvt. Ltd. He submitted that since a sum of Rs. 50 lakhs has been deposited by M/s. Asp Investments limited, defendant No. 3 in the main suit, the dues of the revenue to the extent of Rs. 7,27,926.00 be satisfied first and the amount to that extent, out of the sum of Rs. 50 lakhs should not be released to any party. By the said letter the Tax Recovery Officer also purported to exercise the powers u/s 226(3) of the Income Tax Act, 1961.

(3) Arguments on whether the revenue could claim a lien on the amount of approximately Rs. 13 lakhs, lying in the Court were heard on 14.3.1997 when orders were reserved. By this order, I propose to decide the request made by the Department.

(4) The present suit was disposed of in terms of a compromise application under Order Xxiii Rule 3 of the Code of Civil Procedure, recorded on 30.10.1995.

Directions were also issued for the release of the Fixed Deposit Receipt dated 27.4.1994 in the sum of Rs. 54,80,817.00 to the plaintiff decree holder. Further directions were, thereafter, given based on the application moved by an applicant/ intervenor whereby a sum of Rs. 45 lakhs out of the total amount of Rs. 58,75,000.00 approximately was directed to be released to the plaintiff and the balance was to be retained in the Court, pending the disposal of the applications and objections filed by the intervenor/applicant.

(5) The question that arises for consideration is whether the amount lying in Court, approximately Rs. 13 lakhs, could be said to be belonging to the assessee, which could be claimed by the Income Tax Department? It may be recapitulated that the amount of Rs. 50 lakhs was deposited by M/s. Asp Investments Ltd., defendant No. 3 in the main suit. As noted earlier, the suit was disposed of on 30.10.1995 and in terms of the said compromise the aforesaid amount is to to be given to the plaintiff, who had filed this initial suit for recovery of Rs. 58 lakhs, claiming that he had given a loan of the said amount to defendant No. 1. The suit having been disposed of in terms of the compromise, the money is lying in the Court, pending only the disposal of the objections raised by applicant/intervenor, claiming to be one of the legal heirs of defendant No. 2. Needless to mention that in these circumstances, the assessee, viz. defendant No. 1, from whom tax recovery is due, has no control over the money which was deposited and is lying in the Court. Defendant No. 1 cannot be permitted to withdraw the amount on his own volition. In these circumstances, the said amount does not belong to defendant No. 1 and the provisions of Section 226 of the Income Tax Act would not get attracted. It is only such amounts over which the assessed has full proprietary or an exercisable right that fall within the scope of the said section. Reference in this connection may be made to the decision of the Andhra Pradesh High Court reported as Sayyid Khawaja v. Raghuvender Rao & Others, Itr Vol. 103 294.

(6) In view of the foregoing, the application has no merit and is dismissed.