

(1977) 12 AHC CK 0013
In the Allahabad High Court
Case No : Civil Revision No. 102 of 1977

HOLA RAM and Others

APPELLANT

Vs

GENERAL MANAGER, NORTHERN RAILWAY.

RESPONDENT

Date of Decision : 07-12-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Income Tax Act, 1961 — Section 222, 226

Citation : (1978) 7 CTR 135

Hon'ble Judges : J. M. L. Sinha, J

Bench : Division Bench

Judgement

J. M. L. Sinha, J. - This revision arises out of the orders dated 6-12-1976 and 16-12-1976 passed the Civil Judge, Allahabad in Original Suit No. 136 of 1976.

2. The facts of the case, in so far as they are relevant for the disposal of this revision can briefly be stated as under :

3. M/s. L. K. Ahuja & Co. was a partnership firm which came into existence through a partnership deed executed on 3rd of February, 1949. It took contracts for certain works from the Northern Railway between September 1969 a February, 1971. After the works were completed, differences cropped up between the parties. Defendant opposite parties Nos. 4 and 5 claimed that the partnership firm was reconstituted on 31st of August, 1970 so that Hola Ram, applicant No. 1, and Amrit Lal, defendant opposite party No. 6, retired from the partnership and settled their accounts. According to the said opposite parties, Hola Ram or Amrit Lal did not have any interest in the partnership thereafter and the reconstituted partnership, having, assumed the entire liabilities of the firm as it was initially constituted, carried on the work. According to opposite parties Nos. 4 and 5 the reconstituted firm dissolved on 30th of April, 1971 as a result of differences having cropped up between its partners. As opposed to this, the case of the applicants was that the partnership, as it was initially constituted, continued to exist. On account of some differences having cropped up between

the partners notices were served by some of them on the plaintiff opposite parties Nos. 1 and 2 to refrain from making any payment to defendant opposite parties Nos. 4 and 5 In the meantime, out of the amount payable by the plaintiff opposite parties Nos. 1 and 2 to the partnership firm a sum of Rs. 1,91,362.00 was attached and recovered by the Income Tax Officer under S. 226 of the Income tax Act, 1961. Manohar Lal, one partner of the allegedly reconstituted partnership then filed a writ petition in this Court being writ petition No. 6181 of 1973. The writ petition was allowed and the Income Tax Department was directed to return a sum of Rs. 1,91,362.00 to the Railway Department, which order was complied with. However since differences between parties continued to exist, the plaintiff opposite parties Nos. 1 and 2 filed an inter-pleader suit in the court of the Civil Judge Allahabad. The plaintiff opposite parties Nos. 1 and 2 also deposited the said amount in the court praying that it may be paid over to such of the defendants as may be entitled to it.

4. When the amount was is deposit with the court below, a sum of Rs. 1,02,947/- out of it was attached by the Income tax Department under S. 222 of the Income Tax Act read with Rule 31 of the Rules framed under the Income Tax Act (Contained in the Second Schedule appended to the Act.) An Application was than moved by defendant opposite party No. 4 that the amount got attached by the Income tax Department may be sent to them as otherwise be will also be liable to pay interest thereon. It was further prayed that the balance amount of Rs. 88,415/- be paid to him. Defendants 1 and 3 (arrayed as opposite parties Nos. 3 and 5 in the present revision) did not object against this request made on behalf of defendant No. 2, while the applicants (arrayed as defendant Nos. 5, 6 and 7 in the plaint) and Amrit Lal, defendant opposite party No. 6, did not turn up in spite service of summonses. The trial court vide its order dated 6th December, 1976, allowed the application of defendant opposite party No. 4, and directed that the sum of Rs. 1,02,947.00 attached by the Income Tax Department be sent to them and the balance amount of Rs. 88,415.00 be given to defendant opposite party No. 4 on his furnishing security of Rs. 95,000.00. After the aforesaid orders were passed, applicants were moved on behalf of the applicants and the defendant opposite party No. 6 for setting aside the same. The grounds taken by them was that they did not receive any notice or information about the suit. The trial court did not accept the contention raised on behalf of the applicants and defendant opposite party No. 6 about the non-service of the notices. The trial court further held that, in any case the rights of the parties were amply protected in the order dated 6-12-1976 with the result that the trial court vide its order dated 16th of December, 1976 rejected the application for setting aside the order dated 6th of December, 1976.

5. Through this revision the applicants impugn both the orders viz., the order date 6-12-1976 and that passed on 16th of December, 1976.

6. Now, so far as the latter order is concerned, the trial court, on a consideration of the material on record, held that the contention raised on behalf of the

applicants regarding non-service of notice on them was not substantiated. It was in consequence of this conclusion that the trial court rejected the application for setting aside the ex parte order dated 6-12-1976. The question whether the applicants had or had not been served is a question of fact and it was open to the trial court to reach any conclusion on the material on record. The conclusion reached by the trial court in that regard cannot be interfered with in a revision filed under S. 115, C.P.C. as the order does not suffer from any jurisdictional error.

7. This leaves me with the order dated 6-12-1976. It consists of two parts viz.

1. Direction for an amount of Rs. 1,02,947.00 being sent to the Income tax Department, and
2. Direction for the balance amount of Rs. 88,415.00 being paid to defendant opposite party No. 4 an furnishing Security to the extent of Rs. 95,000.00.

Learned counsel for the applicants contended that S. 226 of the Income Tax Act does not apply to a Court. Learned counsel further contended that, in any case, the Income Tax Officer can issue a notice under S. 226 only with regard to the money which is due from any person to an assessee. It was stressed that the present being an interplayer suit and the rights of the parties being still in dispute, it could not be said that any part of the amount in deposit with the Court was due to the firm M/s. L. K. Ahuja & Co. and consequently it could not be attached and sent to the Income Tax, Department. Learned Counsel urged that the order dated 6-12-1976 thus suffers from a patent error. I have given my careful thought to the contention raised, but I regret my inability to accept the same.

8. As already pointed out in the narration of the case, earlier, the Income tax Authorities did not act under S. 226 of the Income Tax Act, forgetting the aforesaid amount attached. It was under S. 222 when an assessee is in default, the Income Tax Officer may forward the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee and the Tax Recovery Officer, on receipt of such certificate, can proceed to recover that amount, inter-alia by attachment and sale of the assessee's movable property. Rule 31 states that where the property to be attached is in the custody of any court or public officer the attachment shall be made by a notice to such Court or Officer requesting that such property may be withheld subject to the further orders of the Tax Recovery Officer. It transpires that a recovery certificate was issued and it was at the instance of the Tax Recovery Officer that the amount was attached. The amount attached was payable as Income Tax by the firm M/s. L. K. Ahuja & Co., defendant opposite party No. 3. It is the own case of the applicants and opposite party No. 6 that the firm M/s. L. K. Ahuja & Co., as it was constituted in the beginning, continued to exist till the end, that they were the partners, of the firm and that it was that firm that carried out on the work under the contract taken from the Railways. It cannot therefore, be successfully

urged on their side that they were not under any liability to pay the Income Tax outstanding against the firm on the income that accrued to it through the contracts given by the Railway Department.

9. The contention raised on behalf of the applicants that the amount in question could not be attached and that the trial court acted illegally in making in direction for that amount being sent to the Railway cannot therefore be accepted.

10. As for the second part of the impugned order viz. directing the balance amount of Rs. 38,415.00 being paid to the defendant opposite party No. 4, the trial court protected the interest of all the parties by attaching a condition to the effect that the said amount would be paid to the defendant opposite party No. 4 only on furnishing security to the extent of Rs. 95,000.00 Even otherwise it was within the jurisdiction of the court to pass such an order and order of that nature cannot be interfered with in a revision.

11. This revision, therefore has no force and must fail. The revision fails and is hereby dismissed with costs.