
(1986) 08 OHC CK 0029
In the Orissa High Court
Case No : T.S. No. 82 of 1979

K. C. SARANGI, INCOME TAX OFFICER APPELLANT
Vs
BICHITRANANDA KAR. RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

Income Tax Act, 1961 — Section 226, 264, 293

Citation : (1987) 64 CTR 272

Hon'ble Judges : K. P. Mohapatra, J

Bench : Division Bench

Judgement

K. P. Mohapatra, J. - This revision impugns the order passed by the Id. Subordinate Judge, First Court, Cuttack, directing the petitioner to make deposit of Rs. 97,975 in the Court.

2. The case of the opposite party is narrated in brief. The opposite party is the plaintiff in Title Suit No. 82 of 1979 in the Court of the Subordinate Judge, against All Orissa Non-Journalist Employees Union who are the defendants. The relief claimed in the suit is to injunct the defendants restraining them not to manage, administer, publish and circulate the daily newspaper Matrubhumi, commanding them to restore its possession and management to the opposite party and to further restrain them not to receive any amount from the public relations department of the State Government or other concerns due to the daily newspaper Matrubhumi. A sum of Rs. 95,975 was to be received by the management of Matrubhumi from the public relations department of the State Government. Kar Bros., a partnership firm, had Income Tax liability with which neither opposite party No. 1 nor the management of Matrubhumi had any connection. The Petitioner, who was the ITO, by his attachment order dt. 22-3-1982 attached the entire amount of Rs. 95,975 in the hands of the director of the public relations departments of the State Government towards the Income Tax liability of Kar Bros. although the said amount was the property of the management of Matrubhumi and receivable by the opposite party as the

Receiver. The petitioner sent a copy of the attachment order to the opposite party by letter dt. 26-3-1982 on receipt of which the latter filed an application before the former for vacation of the order of attachment, but without success. The attachment might result in total stoppage of publication of the newspaper and non-payment of the salary and statutory dues of the workers. It is stated that the amount was custodia legis and its attachment was illegal.

3. The petitioner filed his objection and contended, inter alia, that the petition filed by the opposite party before the Id. Subordinate Judge was not in accordance with any of the provisions of the CPC, 1908, and so was not maintainable. He was not a party in Title Suit No. 82 of 1979 and was not bound by any order passed therein. As the ITO he was a statutory authority and could not be sued in his name. Kar Bros. was a partnership firm under the IT Act, 1961 (hereinafter referred to as the Act) constituted by deed of partnership dt. 1-1-1963 consisting of five members including the opposite party. The deed of partnership provided that the parties formed an HUF carrying on family business in the name and style of Saraswata Press. Printing and publishing Matrubhumi is the business of Kar Bros. and its income was returned as income of Kar Bros. from year to year and was assessed as such. Kar Bros. carrying on the business of printing and publishing Matrubhumi was in arrear of Income Tax from 1967-68 to 1973-74 to the extent of Rs. 95,975. Demand notices were served on the assessee, but the dues were not cleared. Therefore, notice under s. 226(3) of the Act was served on the director of information and public relations department of the State Government on 22-3-1982 with a copy to Kar Bros. who received the same on 29-3-1982. In compliance with the notice, payment was made on 6-4-1982. Kar Bros. and the management of Matrubhumi being integrally connected with each other, no illegality was committed by him in discharging his statutory duties and recovery of Income Tax. Statutory remedy is available under s. 264 and relief claimed in the petition is barred under s. 264 and relief claimed in the petition is barred under s. 293 of the Act. Further, the Income Tax dues were collected by the Union of India in due process of law and as Union of India is not impleaded in the case, the petition is liable to be dismissed for non-joinder of parties. The petitioner thus resisted the claim of the opposite party for deposit of the sum of Rs. 95,975 in the Court.

4. The Id. subordinate-Judge did not receive oral or documentary evidence, but after hearing the parties recorded the following findings :

(a) In Misc. Appeal No. 131 of 1975 the High Court held that the partnership firm of Kar Bros. was invalid.

(b) Kar Bros. did not exist.

(c) the management of Matrubhumi had no connection with Kar Bros.

(d) The Income Tax recoverable from Kar Bros. could not be recoverable from the dues payable to the management of Matrubhumi.

(e) The property in the hands of the Receiver appointed by the Court is exempt from judicial process except to the extent permitted by the Court who had appointed the Receiver.

(f) The amount due to the management of Matrubhumi by the information and public relation department was custodia legis relation department was custodia legis and could not be attached by the petitioner without the leave of the Court.

(g) The attachment caused hardship to the workers employed by the management of Matrubhumi.

With these findings the Id. Subordinate Judge declared the attachment illegal and passed the impugned order directing the petitioner to deposit the sum of Rs. 95,975 in the Court.

5. The first four findings, namely, (a), (b), (c) and (d) are based on a finding in Misc. Appeal No. 131 of 1975 of the High Court. The certified copy of the judgment of the said miscellaneous appeal was not admitted into evidence at the instance of the opposite party who placed reliance on it. It is not known whether the petitioner was aware of the finding in the miscellaneous appeal to the effect that the partnership firm of Kar Bros. was invalid and so Kar Bros. and the management of Matrubhumi were separate entities inasmuch as, for the tax liability of the former, the dues payable to the latter could not be recovered. I was myself in difficulty till I obtained the records of Misc. Appeal No. 131 of 1975 disposed of on 12-3-1976 from the record room of the High Court and found from it that the miscellaneous appeal arose out of an arbitration dispute between the opposite party and the other partners of the partnership firm Kar Bros. constituted by the deed of partnership dt. 1-1-1963 which was marked Ext. A in that proceeding. From paragraph 15 of the judgment, it appears that the partnership deed was not challenged in a separate proceeding, but in course of argument in the miscellaneous appeal it was urged by one of the partners (not the opposite party) that the partnership deed having not been executed by all the members of the Kar family, was invalid. In consideration of the observation of the arbitrator to the effect that one brother and three sisters of the Kar family were not parties to the partnership deed, the Id. Judge observed that the partnership deed, the Id. Judge observed that the partnership deed was an invalid document because, all persons having interest in the business were not parties to it. These facts, however, might not have been known to the petitioner who is a total stranger to the suit. If the certified copy of the judgment in the miscellaneous appeal would have been made a part of the record, in view of the observation in the miscellaneous appeal, the petitioner would either have got the opportunity to explain the situation or would have conceded to the demand of the opposite party. It thus appears that a valuable piece of documentary evidence was withheld from the Court, as well as from the petitioner and there was denial of the principle of natural justice. It is, therefore, necessary that the opposite party should produce the certified copy of the judgment in Misc. Appeal No. 131 of 1975 as his evidence so that the petitioner shall have an opportunity

of meeting the same.

6. The findings recorded by the Id. Subordinate Judge to the effect that the property in the hands of the Receiver is custodia legis and is exempt from judicial process is not at all in dispute as a sound legal proposition. It is well known that property in the hands of a Receiver appointed by the Court is as good as property in the hands of the Court itself. In *Kanhaiyalal Vs. D.R. Banaji and Others*, , it was held :

"..... It is also settled law that proceedings taken in respect of a property which in the possession and management of a Receiver appointed by Court under Order 40, rule 1 of the Code of Civil Procedure, without the leave of that Court, are illegal in the sense that the party proceeding against the property without the leave of the Court concerned, is liable to be committed for contempt of the Court, and that the proceedings so held, do not affect the interest in the hands of the Receiver who holds the property for the benefit of the party who, ultimately, may be adjudged by the Court to be entitled to the same"

An identical view was also expressed by a Division Bench of this Court in *Bholanath Naik and Others Vs. Krupasindhu Naik and Others*, to the effect that the general rule is well settled that the property in the hands of a Receiver is exempt from judicial process, exempt of course to the extent permitted by the appointing Court. It is undisputed that in the main suit the opposite party was appointed as Receiver. Therefore, if Kar Bros. and the management of the Matrubhumi are separate legal entities, the petitioner, in view of the settled legal position, could not have proceeded against the dues payable to the latter as the Income Tax liability of the former. So this aspect of the case is also dependent on a finding as to whether the deed of partnership was invalid as observed in *Misc. Appeal No. 131 of 1975*.

7. The petitioner raised the plea that the proceeding against him was barred by s. 293 of the Act. This aspect of the case was not at all dealt with by the Id. Subordinate Judge. He also did not discuss under which provisions of law a proceeding was initiated and disposed of against the petitioner, a total stranger to the suit.

8. It is, therefore, necessary that on these points specific findings have to be recorded. I am aware that the workers of Matrubhumi might have been put to financial difficulties because of the recovery made by the petitioner. All the same, proceedings before a Court of law has to be decided justly and effectively on the basis of evidence after giving due opportunity to the contesting parties. In this case the Id. Subordinate Judge failed to discuss or decide the important points indicated above. Therefore, in my considered opinion, it is a fit case for remand so that both the parties shall get adequate opportunity of proving their respective cases by adducing evidence. As regards recovery of the amount of Rs. 95,975 from the hands of the IT Department, there may not be any difficulty, because if an order is passed, the IT Department shall be bound to deposit the

amount in the Court.

9. For the aforesaid reasons, the civil revision is allowed and the impugned order is vacated. The case is remanded for fresh disposal according to law in the light of the observation made above. The lower Court record may be sent back at once. No costs.