(1991) 01 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 431 of 1989

KESHAV DEO PODDAR — APPELLANT

Vs

TAX RECOVERY OFFICER AND OTHERS. — RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (1992) 193 ITR 480

Judgement

The petitioner says that he has purchased the property in question in an auction held by a civil court in execution of a decree obtained by the Punjab National Bank and others against the firm, Babulal Motilal (Execution Case No. 74 of 1953 in O. S. No. 254 of 1952, Smt. Sarbati Devi v. Baboo Lal Moti Lal, on the file of the learned Civil Judge, Aligarh). The petitioner says that the auction was held on April 29, 1956, and confirmed on May 29, 1956. He says that a sale certificate has been issued to him and that he was put in possession and that thereafter he substantially improved the property by making further constructions. While so, he says, on December 14, 1988, the Tax Recovery Officer issued a citation in a sum of Rs. 14,715 said to be due against the firm, Babulal Motilal, and towards realisation of the said amount, attached the petitioners house aforesaid. The petitioner says that the said house cannot be proceeded against for recovery of arrears due from the firm. He also says that he filed objections before the Tax Recovery Officer on December 28, 1988, a copy of which has been filed as annexure III to the writ petition.

The petitioners grievance is that, without making any enquiry into those objections and without deciding them, the Tax Recovery Officer is proceeding to sell the property.

In the counter-affidavit filed by the respondents, it is stated that the property was attached under the Income Tax Act for recovery of arrears due from the firm. It is, therefore, submitted that the house continues to be liable for the said arrears. It is further stated that, on December 14, 1988, the house was again attached. In the counter-affidavit, it is not denied that the petitioner did file objections to the attachment/sale on December 28, 1988.

Rule 11 of Schedule II to the Income Tax Act, 1961, provides for investigation of such objections/claims by the Tax Recovery Officer. The provision corresponds to Order 21, rule 58, of the Civil Procedure Code. Sub-rule (1) of rule 11 reads thus :

"11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed."

In view of the said forum available, it is not necessary or proper for us to express any opinion on the several factual and legal contentions urged by both the sides. It is sufficient to direct that the Tax Recovery Officer shall proceed to investigate and adjudicate upon the objections filed by the petitioner on December 28, 1988 (annexure III to the writ petition) in accordance with law. The further steps to be taken against the said house shall depend upon the result of such inquiry.

With the above observations, the writ petition is disposed of. There shall be no order as to costs.

