(1995) 08 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 158 of 1980

Manzoor Ahmad Khan APPELLANT

Vs

Civil Judge,Rampur & Ors. RESPONDENT

Date of Decision : 07-08-1995

Acts Referred:
Constitution of India, 1950 — Article 226, 372

Citation : (1995) 08 AHC CK 0078

Hon'ble Judges : B.M.Lal, J and S.N.Saxena, J

Final Decision : Dismissed

Judgement

1. The petitioner has instituted this writ petition for issuance of a writ order or direction in the nature of certiorari for getting quashed the order of respondent No. 1, Civil Judge, Rampur dated 1441980 as contained in Annexure No. 3 to this writ petition and for such offer order for which he may be found entitled to. The facts of the case which gave rise to this writ petition are as follows:

Petitioner, Manzoor Ahmad Khan who was plaintiff in a civil suit against respondent No. 4, M/s. ?.am Charan Das Ram Kishore, Rampur had obtained from the Civil Judge, Rampur decree for recovery of a sum of Rs. 38,286.34 with 5% interest and costs the total of which comes to Rs. 50,000. The plaintiff namely, Manzoor Ahmad Khan (the petitioner) had got attached before judgment a sum of Rs. 50,000 on respondent No. 4, the firm, which was lying with the State Bank of India, Rampur. Respondent No. 4, M/s. Ram Charan Das Ram Kishore, hereinafter referred to as the "firm" tried to defeat the claim of the petitioner in various ways including filing of insolvency petition which was pending when the suit was decreed. The firm was in arrears of sales tax pertaining to the years upto 197879. The State, therefore, prayed the court for payment of the sales tax dues on priority basis out of the aforesaid amount which was got attached before judgment by the plaintiff. The prayer was opposed by the plaintiff but after hearing both the parties, the learned Civil Judge, Rampur by a wellconsidered and properly written order, allowed the prayer of the

State and directed for payment of the sales tax dues to the State in preference to the claim of the plaintiff.

2. Feeling aggrieved, the petitioner preferred this writ petition. The first question for consideration is the priority claim of the State as against the private individual. Learned lower court has relied upon a few decisions of Madras and Bombay High Courts before coming to the conclusion that the debt of the State was to be treated on priority basis. It appears, however, that the decision of the Hon''ble Supreme Court reported in AIR 1965 SC 1061 was not probably brought to the notice of the learned Civil Judge due to which he had to support his reasoning with the help of the position of state dues prior to coming into force of the Constitution of India and the Article 372 of the Constitution of India. It was however, not necessary to refer to the said history as the answer to the question was provided by the aforesaid decision of Hon''ble five Judges of the Hon''ble Supreme Court. The Hon''ble Supreme Court has that there was consensus of Judicial opinion that the arrears of tax due to the State could claim priority over private debts. The following observation of the Hon''ble Supreme Court may be reproduced below:

"The rules of Common Law relating to substantive rights which had been adopted by this country and enforced by judicial decisions, amount to "Law in force" in the territory of India at the relevant time within the meaning of Article 372(1). Therefore, the Common Law doctrine about priority of crown debts which was recognized by Indian High Courts prior to 1950, constitutes "Law in force, within the meaning of Article 372(1) and continues to be in force."

3. On behalf of the petitioner, no authority could be pointed out in support of the contention that the State dues could not be given priority as against the decree against the firm. In our opinion, State dues were rightly priority by the learned Civil Judge as against the claim of the petitioner.

4. For respondent No. 5, the State of U.P. reliance was placed upon a decision of Bombay High Court reported in AIR 1957 Bom 91 Income Tax Officer, Ward C, Sangli, v. Chandanbai Balaram Doshi wherein it was held that the State had priority to collect the salestax dues from the judgmentdebtor over other secured debtors. It would be proper to reproduce the following observations of Bombay High Court:

1. "The scheme of the Civil Procedure Code for recovery of dues under money decrees indicates that until the Court has directed appropriation of the amount to the claim made by the decreeholder or of creditors entitled to rateable distribution, the amount received in Court continues to remain as of the judgmentdebtor and* is not held by the Court for and on behalf of or as a trustee for the creditor. By levying attachment in execution of a money decree, the judgmentcreditor does not obtain a charge on the properly attached or its proceeds, nor does be come a secured creditor. The proceeds at a Court sale of unencumbered property of the judgmentdebtor continue to belong to him subject

to the restrictions imposed by the order of attachment, until appropriated by order of the Court to the claim of the creditor or creditors."

"On a competition between private unsecured creditors and the state, the claim of the state to payment of debt to it prevails. Therefore, where the amount was realised in execution proceedings, by sale of the property, moveable and immovable, belonging to the judgmentdebtor and the proceeds were held by the court on behalf of the judgmentdebtor, the State has priority to collect sales tax due from the judgmentdebtor over others unsecured creditions."

5. For the petitioner however it was vehemently argued that he was not an unsecured creditor and his status after obtaining decree against the firm was that of a secured creditor due to which he was entitled for priority as against the sales tax dues of the State. The contention, however, was devoid of merits. The mere fact that he had obtained decree against the firm did not mean that he had become a secured creditor and in the eye of law, he was nothing more than an unsecured creditor. In support of this legal position, the learned lower court relied upon a Full Bench Decision of Madras High Court reported in AIR 1938 Mad 360 Manickam Chettiar v. Incometax Officer, Madura wherein it was further held that in competition between the private unsecured creditor and the State, the claim of the State for payment of debt would prevail. It need not be emphasised that unpaid arrears of the sales tax constitute debot in the eye of law.

6. The petitioner, therefore, could not claim priority as against the State as his position was that of an unsecured creditor. Mere tact that he had got money of the'' firm amounting to Rs. 50,000 in the State Bank of India, Rampur, attached before judgment, did not mean that the Bank was holding the money on his behalf. It hardly needs emphasis that in spite of the attachment, the aforesaid amount of Rs. 50,000 continued to be the money of the firm and not that of the petitioner. Civil Judge, Rampur also could not be equated with the status of a trustee, holding the said amount on behalf of the petitioner. The State, therefore, was fully within its rights to request the learned civil Judge, Rampur for payment of sales tax dues on a priority basis and the learned Civil Judge, under the circumstances, had got no option but to allow the prayer.

7. Madras High Court, in the aforesaid Full Bench decision, in very clear terms held that the court could order payment of crown debt to the Government on mere application of the concerned authority. Sales tax stands on the same footing as the dues of the income tax. The order passed by the learned Civil Judge. Thus, appears to be just, legal and valid.

8. It was contended for the petitioner that the learned Civil Judge, after having decreed his suit, had become functus officio and, therefore, had got no jurisdiction to entertain and decide the request of the State for payment of Salestax dues contention again appears to be baseless. The money of the firm already had been attached by the learned Civil Judge and the attachment continued even after the decision of the suit. Learned Civil Judge therefore, was

competent to entertain and decide the request of the State for payment of its debt on priority basis. It could be deemed to be a review of the judgment of the learned Civil Judge in the eye of law or a part of the execution proceedings as the money was already under attachment. The impugned order, therefore, could not be quashed for the alleged want of jurisdiction.

9. The following observations of this court may be reproduced below from its decision reported in AIR 1973 All 230 State of U.P. v. M/s. Kotak & Co.:

"It was pointed out, therefore, that the English Common Law doctrine having been incorporated into Indian Law, was a law in force in the territory of India and by virtue of Article 372(1) of the Constitution of India, it continued to be in force in India until itwas validly altered, repeated or amended. This being the law, in view of subsection (3) of Section 73 no order of rateable distribution can be passed under subsection (1) of Section 73 which may affect this right of Government to claim priority in respect of payment of its dues against the judgmentdebtor against the competing claims of unsecured decreeholders. Subsection (3) of Section 73 of the Code of Civil Procedure is, therefore, in the nature of a proviso to Section 73 and imposes a limitation on the exercise of power by the Court in the matter of rateable distribution of assets. In view of this limitation on its power, the court will refuse to pass an order of reateable distribution under subsection 1 of section 73 if it is brought to its notice that certain State dues are outstanding against the judgmentdebot and the State''s right to a priority of payment in respect of those dues may by affected by an order of rateable distribution. For if in respect of this statutory protection which is given to the right of Government to priority of payment by subsection (3) an order of rateable distribution is in favour of decreeholder under subsection (1) of Section 73, which has the effect of causing prejudice to this right of Government, then such an order will not take effect and Courts will refuse to pass an order which cannot be enforced in law."

10. From the above discussion, it followed that the learned Civil Judge haft rightly allowed the application of the State of U.P. for payment of its salestax dues alongwith interest on priority basis and the writ petition was liable to be dismissed with costs. The writ petition, as a matter of fact, is nothing more than the abuse of this Court''s process whereby the petitioner got the payment stayed. He, therefore, in our view is liable to pay interest upon the said amount to the State of U.P. at the rate of 18% per annum.

11. The writ petition is dismissed with costs to respondent, the State of U.P. which we assess at Rs. 3,000. The petitioner shall also pay interest at the rate of 18% per annum to the State upon the amount involved for the period during which the writ petition remained pending before this Court. The amount of costs and interest shall be recoverable from the petitioner as arrear of land revenue.