(1954) 05 CAL CK 0033

In the Calcutta High Court

Case No : Civil Revision Case No. 2660 of 1952

Matilal Shroff APPELLANT

Vs

Certificate Officer, 24 Parganas and Others RESPONDENT

Date of Decision : 17-05-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 2, Order 9 Rule 4

Citation : 59 CWN 660

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Sukumar Mitra, Kalyan Kumar Bose and Sitikantha Lahiri, for the Appellant;J. Majumdar, Assistant Government-Pleader, for the Respondent

Judgement

Sinha, J.—The facts of this case are shortly as follows. The petitioner Matilal Shroff alleges that he is the karta of a Hindu undivided family governed by Mitakshara law carrying on a joint family business under the name and style of Dhanraj Bhairadan in Calcutta. This firm was the assessee in respect of the assessment years 1941-42. I am not concerned in this application as regards the assessment, which was made in February, 1946 ex parte, because no one appeared at the time of assessment. The subject matter of this application relates to a period after the assessment. The firm was assessed for a sum of Rs. 30,229-4-0. On the 3rd of March, 1947, the income tax Officer acting under sub-section 2 of section 46 of the Indian income tax Act, issued a certificate which was forwarded to the Collector, 24-Parganas and filed in the office of the Certificate Officer on or about the 21st March, 1947 Thereafter, notice u/s 7 of the Public Demands Recovery Act was sent by registered post, but it was returned with the remark "left". An attempt was made to serve it through a process-server, but it could not be effected as the certificate debtors could not be traced The Certificate Officer gave several reminders to the income tax Department that the address of the certificate-debtors be furnished, but the income tax Officer kept on replying that enquiries were being made and that the particulars would be supplied when available. On or about the 11th May, 1950, a notice was given that if the report is not received on or before the 25th June, 1950, the case would be cancelled. As no reply was received by that date, the Certificate Officer by his order dated the 30th June, 1950, cancelled the certificate The order sheet states as follows :

30.6.50. I.T.O.''s report still not received. Case cancelled.

This order of cancellation was without notice either to the certificate-holder or to the certificate-debtor. It appears that on the 15th March, 1952, the Certificate Officer received a letter from the income tax authorities furnishing a list of assets of the certificate debtor at Bikaner and requesting immediate attachment of his assets. On the 18th April, 1952, the following order was made :

Record received from R.K. today. Seen I.T.O''s No. IV(I) III-R/G dated 14.3.52. The case is restored. Send a certificate under Act I to Collector, Bikaner. Put on 23.6.52.

The case was cancelled u/s 44(2), P.D. Act. But this certificate comes u/s 4 of the P.D.R. Act and the certificate holder is Collector in this case. As such the cancellation of the certificate for reasons stated in the order dated 30.6.50 was not in order and the case is restored.

2. Thereafter the certificate was transmitted under the provisions of the Revenue Recovery Act to the Collector. Bikaner, who in his turn transmitted it to the Collector. Churu (Bikaner) for necessary action. On the 19th June, 1952, the certificate debtor filed an objection petition u/s 9 of the Bengal Public Demands Recovery Act (hereinafter referred as the Act) praying for cancellation of the certificate, for withdrawal of the execution proceedings at Bikaner and for other reliefs; The Certificate Officer. 24-Parganas, thereupon stayed execution and fixed 18th July, 1952, for hearing the objection. The hearing was adjourned from time to time and it was finally heard on the 16th August, 1952 On the 11th September, 1952, this Rule was taken out, calling upon the opposite parties to show cause why an appropriate writ or order should not be made ordering them not to give effect to the order dated the 18th April, 1952, and 22nd April, 1952, or why a writ in the nature of Certiorari should not be issued for quashing the same or why such other or further order or orders made as to this court may seem fit and proper. The actual order of the Certificate Officer on the application u/s 9 of the Act was passed on the 19th September, 1952, whereby he rejected the application.

3. The learned Counsel for the petitioner argues that the order of restoration dated the 18th April, 1952, is bad, because:--

(a) the Certificate Officer was in error in thinking that the certificate was made u/s 4 of the Public Demands Recovery Act, whereas he should have held that it was made under sections 5 and 6 of the said Act and therefore, it was not correctly made,

(b) that in any event the Certificate Officer had no jurisdiction to make an order for restoration of the certificate once having cancelled it.

4. In respect of the first point, it is relevant to set out the provisions of section 44 of the Public Demands Recovery Act which runs as follows

44 (1) The Certificate-officer shall cancel any certificate at the request of the Certificate-holder.

(2) The Certificate-officer may cancel any certificate filed u/s 6 if the Certificate-holder is not reasonably diligent.

5. It is clear that there is a marked distinction between the procedure to be adopted in the two cases. A certificate filed by the collector cannot be cancelled except at his own request. In the case of a certificate filed u/s 6 the Certificate Officer is entitled to cancel the certificate if the certificate-holder is not reasonably diligent. A reference to section 6 will show that it relates to requisitions for certificate in cases other than cases covered by section 4. When the Certificate Officer is satisfied that any public demand payable to the Collector is due, then he proceeds u/s 4. But where any public demand is payable to any person other than the Collector, such person may act u/s 5 and send to the Certificate Officer any written requisition in the prescribed form and then action is taken u/s 6.

6. In this particular case, the income tax Officer had proceeded u/s 46(2) of the Indian income tax Act which proceeds as follows :

The income tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

7. Mr. Mitter appearing on behalf of the petitioner argues that the certificate here must be considered as one u/s 5 read with section 6 and not u/s 1 of the Act. He says that the amount here is not a public demand payable to the Collector, but it is a public demand payable to the income tax Officer which is being realised by certificate proceedings and secondly, the certificate is of the nature mentioned in section 5 and it is to be recovered in terms of section 6.

8. In my opinion, this is not a sound argument. Although the demand is in the first instance payable to the income tax Officer, the provisions of section 46(2) of the I.T. Act set out above proceeds on the assumption that the amount is to be recovered as arrears of land revenue. It is well known that it is the Collector who collects the land revenue. In my opinion, such a certificate must be taken to be certificate issued u/s 4 of the Act This view is supported by the Privy Council decision in the case of Doorga Prasad Chamaria v. Secretary of State, (1) [49 C.W.N. 334 : AIR (1945) P.C. 62]. It was held there that where the Certificate Officer purporting to act under the power conferred by section 46(2) of the income tax Act, addresses to the Collector a certificate certifying that a sum is due to the assessee as income tax, etc., and requests the Collector to recover

the amount as if it were an arrear of land revenue, it is a public demand within the meaning of the Bengal Public Demands Recovery Act. The certificate issued is u/s 4 and not u/s 6 and no requisition u/s 5 is required. In that case, the appellant was assessed to income tax and as he did not pay the same, the income tax Officer issued a certificate and forwarded it to the Collector u/s 46(2) of the income tax Act. Precisely the same point was taken in that case, namely, that the certificate was not u/s 4, but u/s 5 read with section 6 of the Public Demands Recovery Act. Sir John Beamount delivering judgment said "the second objection is that there was no requisition u/s 5. Their Lordships agree with the view taken by the High Court that the money was payable to the Collector and accordingly the certificate was issued u/s 4 and not u/s 6 and no requisition u/s 5 was required.

9. Although it was not taken in the pleadings, Mr. Mitter in course of argument raised a point that the certificate which shows the certificate-holder to be the Collector, 24-Parganas, is bad inasmuch as the certificate-holder should have been described as the ''Union of India''. He relied on a recent Bench decision of this Court Abanindra Kumar Maity Vs. A.K. Biswas, . In my opinion, the decision has no application to the facts that we are considering. In Abanindra Kumar''s case (2), the certificate-holder was shown to be the Government of West Bengal. It was held that the liability of income tax was a liability to the Union Government and, therefore, the proper description would be the Government of Union of India. Here, however, there is no such misdescription. I am informed that it has been the uniform practice to treat the Collector as the certificate-holder. In fact, the words used in section 4 of the Public Demands Recovery Act are: public demand payable to the Collector". The Collector while realising the public demand in the nature of arrears of land revenue, acts as the representative of the Union of India and, therefore, in my opinion, can be properly shown as the certificate-holder. No authority was shown to me for the proposition that the description of the Collector as being the certificate-holder was a misdescription and vitiated the certificate. It is quite clear that the State of West Bengal cannot, under any circumstances, be considered to be the certificate-holder, because income tax is not payable to the State of West Bengal, but to the Union of India.

10. That being so, it is equally clear that the Certificate Officer in making the order of cancellation fell into an error in proceeding u/s 44 (2) of the P.D.R. Act instead of section 44(1). Since the certificate-holder was the Collector, and the certificate was issued u/s 4, it could only be cancelled if the Collector requested that it should be cancelled In this particular case there was no such request.

11. The more difficult question is as to whether the Certificate Officer could get rid of the cancellation order which he had passed inadvertently and restore the proceedings. According to Mr. Mitter, the Public Demands Recovery Act is a complete code in itself and as there is no provision in it for the restoration of a cancellation order, the Certificate Officer was powerless even though he

discovered that he made an erroneous order of cancellation. The matter could only be put right upon an appeal or a revision made under the Act. Mr. Majumdar on behalf of the opposite party has drawn my attention to the fact that u/s 57 of the Public Demands Recovery Act the Certificate Officer is a ''court'' and that proceedings before him are deemed to be civil proceedings He argues that it follows that in the proceedings before him, the provisions of the CPC applies He next draws my attention to the provisions of Order 9, rules 2, 3 and 4 of the Civil Procedure Code. Rule 2 provides for the case where on the day fixed for hearing of the suit, the summons is found not to have been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges. Upon these facts a suit may be dismissed. Under Rule 3, where neither party appears when the suit is called on for hearing the court may make an order that the suit be dismissed. Rule 4 deals with the effect of such a dismissal So far as an application for restoration under rule 4 of the Code is concerned, there is no provision for giving notice to the opposite side, whereas if the matter is governed by rule 8 which applies when the defendant has appeared and the plaintiff does not appear, any application for restoration must be upon notice to the defendant. Mr. Majumdar argues that upon an analogy, the matter must be considered upon the footing that the suit had been dismissed either because no party appeared or because the plaintiff was in default. Under such circumstances, he says that an application for restoration need not be upon notice.

12. Although a Certificate Officer is to be deemed as a court u/s 57 of the P.D.R. Act, the remaining part of the section is restricted to deeming the proceedings before him as civil proceedings for the purpose of section 14 of the Indian Limitation Act, 1908, and not for all purposes. In any event, I do not find that it is possible to consider the proceedings pending before the Certificate Officer as a suit and to apply the provisions of the Code of Civil Procedure. But even if the CPC does not apply, the first part of section 57 of the Public Demands Recovery Act constitutes the Certificate Officer as a Court and, therefore, he has inherent power to restore a cause before himself, if the same has been dismissed (here cancelled) by inadvertence. It appears that the Certificate Officer under the circumstances in this case had no jurisdiction to cancel the proceedings and the order is entirely without jurisdiction. In my opinion, the Certificate Officer had jurisdiction to restore the proceedings which he had cancelled through inadvertence by not noticing previously that he ought to proceed u/s 44(1) and not u/s 44(2). As the defendant up to that moment could not be served with notice, nor had he entered appearance, no injustice was done by restoring it exparte. In any event, it appears that he has now had an opportunity of challenging it and the verdict has gone against him As I agree with the view that the Certificate Officer should have proceeded u/s 44(1) and not u/s 44(2) there will be little point in sending back the case to him for retrial of the same question.

13. The matter may be looked at from another point of view. The certificate could only be cancelled u/s 44. If the Certificate Officer acted without jurisdiction, then the certificate was never cancelled and was outstanding. In

fact, the Certificate Officer never purported to cancel the certificate, but on the 30th June, 1950, cancelled the ''Case'' and on the 18th April, 1952, restored the ''Case'', which means the proceedings. There is nothing in the P.D.R. Act, which prevents him from doing so. In fact, if a certificate is valid and subsisting then the Certificate Officer is bound to proceed to enforce it when called upon to do so by the Certificate-holder. This is no more than what was done in this case.

14. As regards the second point, it was argued by Mr. Mitter that the Revenue Recovery Act was originally an Act which applied within British India. By the Adaptation of Laws Order the provisions of the Revenue Recovery Act have been extended to Part A and Part C states, but not to Part B states. This appears to be so, right up to the Adaptation Order as promulgated in 1950, and I have not been shown any relevant Adaptation Order later than that. My attention has, however, been drawn to the Opium and Revenue Laws (Extension of Application) Act, 1950, (Act XXXIII of 1950), which is an Act to provide for the extension of certain Opium and Revenue laws to certain parts of India. By section 2, the provisions of the Revenue Recovery Act of 1890 (Act I of 1890) amongst other central legislations, have been extended to the rest of India except the State of Jammu and Kashmir. In the Revenue Recovery Act itself, instead of the words, "a Part A state or a Part C state" has been substituted the words "any state to which this Act extends", which, therefore, includes the state of Bikaner which is a Part B state.

15. It is clear, therefore, that the Collector of 24-Parganas, was within his jurisdiction to transmit the certificate to the Collector of Bikaner.

16. The result is that both the points raised have failed and the application must be dismissed. The Rule is discharged. Regard being had to the questions of law involved, I make no order as to costs.

