

(1956) 11 CAL CK 0011
In the Calcutta High Court
Case No : Matter No. 115 of 1955

M.B. Sirkar and Sons

APPELLANT

Vs

S. Banerjee and Others

RESPONDENT

Date of Decision : 23-11-1956

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 7, 9
Constitution of India, 1950 — Article 226

Citation : AIR 1957 Cal 249

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : R.B. Pal, for the Appellant; E. Meyer, Balai Paul and Arun Mukherji, for the Respondent

Judgement

Sinha, J.—The petitioner is a private company with unlimited liability carrying on business as manufactures of jewellery. For the assessment year 1947-48 it was assessed by the Income Tax Officer, Companies Dist. I, Calcutta. The amount assessed was a considerable sum approximating to about Rs. 50,000/- part of which has been paid and about Rs. 40,000/- is still due. The Income Tax Officer thereafter issued a notice of demand u/s 29, Income Tax Act. The petitioner preferred, an appeal before the Appellate Commissioner of Income Tax Range "C" Calcutta. The appeal was dismissed and the assessment upheld by the order dated 30-4-1952. The petitioner thereupon preferred a further appeal, being Income Tax Appeal No. 1929 of 1952-53 before the Income Tax Appellate Tribunal Calcutta Bench. The said Tribunal remanded the matter for a report and after the report was submitted rejected the appeal, that is to say, the assessment of the Income Tax Officer was again confirmed. Thereafter the Tribunal was requested to state a case to the High Court. As it refused to do so an application has been made and I am informed that rule was issued and an order has been made directing the Tribunal to state a case.

2. In this application, however, we are not directly concerned with these

proceedings, but we are directly concerned with the certificate proceedings which were initiated for the recovery of the Income Tax dues. While the above mentioned proceedings were going on, the Income Tax Officer forwarded to the Collector a certificate u/s 46(2), Income Tax Act and a certificate bearing No. 932 I. T752-53 dated 31-3-53 was filed in the office of the Certificate Officer, 24 Parganas for the sum of Rs. 40,363-12-0. Upon the certificate being filed, a notice u/s 7, Public Demands Recovery Act, was served upon the petitioner on, 6-5-1953. What exactly happened was as follows: The process server was given two copies of the notice one signed by the Certificate Officer as required by law and a copy bearing a rubber-stamp, that is to say, facsimile signature. Both these notices were handed over to the certificate debtor who accepted the notice and signed on the back of the notice which contained the original signature and returned the same, while retaining the other notice containing the rubber-stamp, it has been stated that this practice is followed so that the certificate debtor should have a copy of the notice as well as the Authorities. As I have stated before, the notice u/s 7 was served on 6-5-1953. The petitioner thereupon filed a written objection u/s 9, Public Demands Recovery Act, denying liability and challenging the certificate. No objection was taken, however, on the ground that the certificate was not properly signed and as such there was defect in the notice and the service thereof. On 3-9-1953, the petitioner's objections were rejected. It thereupon preferred an appeal before the Additional Collector, 24-Parganas and the appeal was rejected on 21-1-1954. "Thereupon the petitioner filed a revisional application before the Commissioner, Presidency Division and on 11-2-1954 the application was rejected. In none of these proceedings was the point taken that the notice under S. 7 was not properly signed or that it was consequently not properly served. It appears that on or about 4-2-1954 the Additional District Magistrate, 24 Parganas issued a warning notice that if payment was not made by 17-2-1954 a distress warrant will be issued. This is not a notice which is required to be served under any provision of the Public Demands Recovery Act. In any event, it cannot justify the initiation of objections which have not been preferred in accordance with the provisions of Section 9 of the said Act. What happened was that the petitioner preferred an objection to this warning notice and the objection was considered by the Certificate Officer, and rejected on 9-3-1954. Against this order there was an appeal before the Commissioner, Presidency Division, who by his order dated 24-8-1954 dismissed the appeal, against which the petitioner went in revision before the Board of Revenue. The Board of Revenue by its order dated 19-5-1955, held that the service of notice u/s 7 had defects but that the objection could not be taken up at that stage because the petitioner had not taken objection earlier. This rule was issued on 7-7-1955 upon the respondents to show cause why the order of the Board of Revenue and the proceedings should not be quashed and why there should not be issued a writ in the nature of mandamus and prohibition directing the respondents to forbear from giving effect to the order of the Board of Revenue dated 19-5-1955 and for enforcing the certificate of the Certificate Officer dated 31-3-1953.

3. I think that the order of the Board of Revenue in so far as it holds that the petitioner was not entitled to relief at that stage is perfectly correct. Under the Public Demands Recovery Act, there is a specified procedure laid down for preferring objection to a certificate. An objection has to be preferred according to the method laid down in Section 9 and heard according to the provision of Section 10. From such findings there is a provision for appeal and revision. A certificate debtor having exhausted these remedies cannot initiate a second series of objection based upon a notice of warning to the effect that if payment had not been made a distress warrant will be issued. Such objection as were preferred u/s 9 had been considered and the matter went up to the Board of Revenue and must be taken to have been finalised. In my opinion, the second series of proceedings were and are of no avail to the petitioner so far as its challenge to the notice or the certificate thereof is concerned. The position, therefore, is shortly as follows; The petitioner availed himself of the remedies laid down by the Public Demands Recovery Act right up to the Board of Revenue but failed to take any objection on the point that the notice u/s 7 was not properly signed. It is not possible to reopen the whole thing in an application under Article 226. Had it pressed its objection before the original Tribunal it might have obtained relief. This is a matter which has been recently decided by the Court of Appeal in the case of --"Kanai Lal Sethi v. Collector of Land Customs", 60 Cal WN 1042 (A). The learned Chief Justice held there that the petitioner having exhausted his remedies under a Special Act cannot come to this Court by way of application under Article 226 to reopen the whole proceedings from the beginning. It is clear, therefore, that this application is misconceived. Quite apart from this I am by no means certain that there is any substance in the point that the notice has not been served. S. 7 says that when a certificate has been filed in the office of a Certificate Officer, he shall cause to be served upon the certificate debtor, in the prescribed manner, a notice in the prescribed form together with a copy of the certificate. The prescribed manner is to be found in Rule 2 of Sch. II of the Act. It lays down that service of notice issued u/s 7 shall be made by delivering or tendering a copy thereof, signed by a Certificate Officer or such ministerial officer as he authorizes in this behalf, and sealed with the seal of the Certificate Officer. Therefore, service is to be made either by delivering the copy thereof signed by the Certificate Officer or by tendering such a copy. In this particular case the notice containing the original signature was tendered to the certificate debtor who signed on the back thereof and it was taken back. There is no allegation that the certificate debtor wished to keep it and was prevented from doing so. I do not of course say that this was a very commendable way of complying with the rule, and the more simple procedure that should ordinarily be followed is to comply literally with the provisions of the rule. But on the facts of the present case, I do not think it can be said that the original notice was not tendered to the certificate debtor and therefore I do not think that it could be said that technically there has been such a non-compliance with the rule as to make the notice and the service thereof completely defective. However, as I have stated above, it is not necessary to decide this point because" the petitioner

cannot be allowed to raise this objection in an application under Article 226, not having taken or pursued the point during the proceedings had under the provisions of the Public Demands Recovery Act, namely, of his objection u/s 9 and the appeal and revision consequent thereto.

4. Dr. Pal appearing on behalf of the petitioner said that if the notice was bad then any sale which might take place pursuant to the certificate proceedings would be bad. Whether they would be bad or not, and whether Section 36 would apply to the matter or not, is a point which is not necessary for me to decide now, and I do not think that I should express any opinion on such point. The result is that the application fails and the rule must be discharged. No order as to costs. Interim order is discharged.