

(2000) 03 KL CK 0056

In the High Court Of Kerala

Case No : W. P. No. 414 of 1996 9 March 1999

MUNIR AHMED and Another

APPELLANT

Vs

UNION OF INDIA and Others

RESPONDENT

Date of Decision : 09-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 243 ITR 267

Hon'ble Judges : Y.R. Meena, J;Ranjan Kumar Mazumdar, J

Bench : Full Bench

Judgement

By this appeal the impugned judgment and order dated 24-4-1997, has been challenged and a prayer has been made that the impugned order. be quashed. In a petition moved before the learned single judge, the petitioners claimed that they have purchased the property from respondent No. 6. That property was attached for recovery of taxes. The petitioners appellants have challenged the attachment order, as it was absolutely void and contrary to the provisions of the Income Tax Act, 1961.

The learned single judge found that there was an alternative remedy provided under rule 11 of the Second Schedule and the petitioners can file objection before the Tax Recovery Officer challenging the attachment. Therefore, the petition was dismissed on the ground that the alternative remedy is available and that the petitioners can avail of that remedy. Challenging that impugned judgment and order of the learned single judge, this appeal was filed and also a prayer for stay was made. The Division Bench in its interim order dated 25-5-1997, though allowed the revenue to proceed and consider the objection filed under rule 11 of the Second Schedule, but kept the appeal pending till the outcome of the result of the decision of the Tax Recovery Officer after considering the objection of the petitioners.

A question was put to learned counsel appearing for the petitioners appellants as to whether once the alternative remedy has been availed of, simultaneously the

proceeding under article 226 of the Constitution of India can continue. Learned counsel submitted that normally both the remedies cannot be availed of, but when the interim order was passed, none objected and direction was given to the Tax Recovery Officer, to consider the objection of the petitioners, if any, filed under rule 11 of the Second Schedule, the maintainability of the writ petition can be considered after formal affidavits are filed.

Heard learned counsel for the parties. When the alternative remedy is available in respect of the same issue, the matter cannot be agitated under article 226 of the Constitution of India. Admittedly, the alternative remedy has been availed of. Therefore, in our opinion, no grounds survive for entertaining the writ petition under article 226 of the Constitution of India or the appeal arising against the impugned order. Therefore, we, at this stage, would not like to make any comment on the merits as the alternative remedy has been availed of. The appeal arising out of the impugned judgment and order invoking the jurisdiction under article 226 of the Constitution of India, therefore, does not survive.

When the matter was pending since long there was a direction for considering the objection of the petitioners under rule 11 of the Second Schedule and an order has also been passed by the Tax Recovery Officer and communicated to the petitioners-appellants by a covering letter dated 21-7-1997.

It is true that alternative remedy has been availed of, but at the same time the appeal was not disposed of. Therefore, that order has not been challenged on the ground that the order of the Tax Recovery Officer can be considered by the Division Bench. As this order was not the subject-matter before the learned single judge in the writ petition, we would not like to go into the merits of that order of the Tax Recovery Officer. If the petitioners-appellants have any grievance against that order, they are at liberty to file a fresh writ petition, if the writ petition is maintainable within a month from the date.

For a period of one month from the date status quo as on date, as regards the property in question and any amount realised on account of rent will be, maintained.

Both the appeal and the application are, accordingly, disposed of with the above observation.

All parties concerned are to act on a xeroxed signed copy of this dictated order on the usual undertaking.