(2015) 07 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No.3876 of 2011 (O&M)

Munish Jain — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 9
Constitution of India, 1950 — Article 226

Citation : (2015) 07 P&H CK 0082

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : R.P. Kansal, for the Appellant

Judgement

Rajiv Narain Raina, J—The company represented by Munish Jain as plaintiff ran into rough weather when it was unable to repay its debt. A business loan of Rs. 1.2 crores was taken from the Haryana Financial Corporation, Chandigarh [HFC] in the year 1998-99 against the properties of the company as security by pledging the properties of the surety to the tune of about Rs. 61 lacs with the HFC. The company was also sanctioned a cash credit limit by the Punjab & Sind Bank, Pipli for about Rs. 40 lacs. The company was unable to repay the loan and the HFC came down and took possession of the company in the year 2002 including its pledged buildings, machinery, land etc. The company properties were put to auction in the year 2003.

2. The present plaintiff was not one of the four original directors of the company i.e. M/s. Kurukshetra Paper Mills Private Limited. There was a parallel problem running against the company with respect to furnishing of C-forms respecting transactions involving tax liabilities under the Central Sales Tax Act, 1956 for the financial year 2001-02. The assessing authority under the Haryana General Sales Tax Act, 1973 gave breathing time to the company to produce C-forms to claim refunds but there was failure to act even in the extended time granted by the assessing authority. The company was required to submit C-forms for Rs.

43,50,207/- for the financial year 2001-02 by 23rd February, 2005, i.e., at the time of assessment which it miserably failed to meet. The assessing authority allowed 3 months time to furnish C-forms by 11th July, 2005 but even then the plaintiff failed to furnish C-forms within the extended period though they were submitted after a gap of 16 months when C-forms were remitted on 7th November, 2006 worth Rs. 32,16,385/- and later C Forms representing a sum of Rs. 58,300/- thereby totalling an amount of Rs. 32,74,685/-. However, the acceptance of these forms was rejected by the assessing authority since they were filed beyond the stipulated period. Consequently, the company was served summons to make payment of the amount due. The plaintiff made small payments of Rs. 70,000/-, Rs. 50,000/- and Rs. 20,000/- in the year 2007.

3. Since there was run on the company by the Excise and Taxation Department, Haryana demanding money due to it, the plaintiff instead of approaching the authorities under the Sales Tax Act seeking proper remedies, the plaintiff filed the present suit for permanent injunction on 19th February, 2007 praying that no coercive steps be taken and the company be allowed to still furnish C-forms which request had been rejected on 6th April, 2007 by the tax authorities. The claim in the suit is essentially for rebate facilitated by the civil court process.

4. In defence of the suit, the respondent State of Haryana and the assessing authority filed written statement and they took the objection INTER ALIA that the civil court has no jurisdiction to try and entertain the suit. Even notice under Section 80 CPC was not served by the defendants or leave taken by the court to approach it directly for interim relief. The plaintiff had remedies available under the State Act and the Central Sales Tax which had not been availed or exhausted. The suit was dismissed and the appeal remained unsuccessful.

5. There is a clear bar in Sub Sections 1 and 2 of Section 62 of the Haryana General Sales Tax Act, 1973 that the civil court is statutorily divested of jurisdiction to entertain the suits under section 9 of the CPC. The provisions of Section 62 are reproduced next:-

1. No assessment made and no order passed under this Act or the rules made thereunder, by the Tribunal or the Commissioner or any person appointed under sub-section (1) of Section 3 to assist the Commissioner shall be called in question in any civil court and, save as is provided in sub-section (5) of Section 57 and Section 39, 40, 41 and 42, no appeal or application shall lie against any such assessment or order.

2. No injunction shall be granted by any Court other than the High Court of any State or the Supreme Court of India in respect of any assessment made or any proceedings initiated, or in respect of any action taken, or to be taken, in pursuance of any provisions of this Act or the rules made thereunder."

6. There is not only a bar on the civil court but ordinarily even a petition under Article 226 of the Constitution is not maintainable, in a case of the present kind, in view of alternative remedies available under the Sales tax law. At the same

time, it is also equally well settled that regular courts should stay their hands in granting injunctions to the detriment of Government revenues on which depend the development programmes of the Government etc.

7. The suit filed by the plaintiff was wholly misconceived and not maintainable before the civil court and is clearly in abuse of the process of law. Both the Courts have INTER ALIA non-suited the plaintiff on maintainability of the suit by relying on case law noticed in the judgment to which no reference is necessary in the present judgment as the position is well embedded in the law. Much time of the regular courts have been consumed on a matter involving C-forms within the exclusive jurisdiction of the taxing authorities. It is not the business of the civil court to act as a go between of assesses/dealers and the revenue authorities to entertain pleas based on C-forms privileges.

8. I would, therefore, dismiss the appeal with costs in all the courts against the plaintiff and in favour of the defendants. However, if the plaintiff has remedies available still, first before the assessing authority and then the Joint Excise & Taxation Commissioner (Appeals), Ambala and then an appeal to the Sales Tax Tribunal, Haryana he is free to avail them with respect to the C Forms in case they are still dissatisfied then to approach the High Court in an STC or a reference made by the Tribunal itself to this Court. However, these jurisdictional steps cannot be avoided by the plaintiff in seeking a permanent injunction against the Sales Tax authorities in discharge of their statutory duties in making assessments.

9. In the circumstances, learned counsel for the appellant has not been able to tide over this difficulty by any plausible argument. However, while leaving, he submits that the appeal court was not correct in foreclosing the case of the plaintiff in furnishing C-forms by reason of delay alone and that part may be kept open since the law permits C-forms to be furnished at any stage of the proceedings, appeals etc.

10. This prayer is accepted and the issue of C-forms is left open to be agitated by the assessee before the authorities under the Sales Tax Act and deal with it in accordance with law, if it permits. Among the many judgments that elucidate the proposition that C & D forms can be produced at any stage of the assessment proceedings, learned counsel has cited Prestolite of India Limited Vs. The State of Haryana and Others, (1988) 70 STC 198 , a decision of the Division Bench of this Court. The plaintiff may within his rights, if available in law, cite the precedent to his advantage in the appropriate forum, of which the civil court is not.

11. With the above observations the appeal is dismissed on point of maintainability.

