(2003) 09 KAR CK 0032

In the Karnataka High Court

Case No : Regular Second Appeal No. 504 of 2000

M.V. Gnanendra Nath APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Citation : (2004) 186 CTR 324 : (2004) 266 ITR 250 : (2004) 1 KCCR 595 : (2004) 134 TAXMAN 766

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : M.V. Gnanendranath, for the Appellant; M.V. Sheshachala, B.N. Vishwanath and T.N. Ramesh, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—Though this appeal is posted for admission, the same is taken up for final disposal with the consent of both the parties.

2. This appeal is filed against the judgment and decree passed in R.A. No. 35/1996 on the file of the Principal Civil Judge (Sr. Dn)., arising out of the judgment and decree passed in S. No. 1293/1989. The appellant is the plaintiff and in person argued his case.

3. The appellant filed a suit for recovery of Rs. 50,000 as damages from defendants 1 to 6 and 10 and 11. The plaintiff on account of death of his sister inherited the insurance amount of Rs. 1,04,000 in the year 1973. Out of the said amount, the plaintiff invested a sum of Rs. 48,000 in a fixed deposit for a period of five years in Canara Bank carrying interest at the rate of 10 per cent per annum, deposited a sum of Rs. 58,000 in Tamil Nadu Transport Development Financial Corpn. Ltd., for a period of four years carrying interest at the rate of 13: per cent p.a. and deposited Rs. 2,000 in Karnataka Bank in savings bank account. The fourth defendant-ITO conducted the raid and found some sale deeds and other documents and issued prohibitory order to the banks and Tamil

Nadu Transport Development Financial Corpn. Ltd., not to pay the amount to the plaintiff and initiated an enquiry to find out whether the amounts in deposit were the escaped income not assessed to tax. It is stated that, the enquiry was transferred from fourth defendant to second defendant and thereafter to sixth defendant at Bangalore. The enquiry was dragged on for over a period of 3 years 8 months. The Canara Bank was only paying the interest on the fixed deposit amount regularly till the date of maturity and refused to pay the fixed deposit amount after the maturity on the ground of prohibitory order. The Tamil Nadu Transport Development Finance Corpn. Ltd., withheld payment of interest and as well the fixed deposit, amount. The Karnataka Bank also withheld the payment of Rs. 2,000 and did not permit the plaintiff to operate the savings bank account. The plaintiff filed a Writ Petition No. 39697/1982 before this Court alleging arbitrary and illegal free2ing of the amounts with oblique motive and sought for a direction for release of the fixed deposit amounts and the interest accrued thereon. The IT authorities in the writ petition submitted that the prohibitory order has been revoked and there is no objection from their side for payment of the deposit amounts to the plaintiff. Accordingly, the banks paid the amount with interest upto maturity after deducting tax at source and did not pay interest from the date of maturity till actual payment. For loss of interest and the inconvenience caused, the plaintiff claimed damages of Rs. 50,000 from defendants 10 and 11 who are the ITOs and has held them personally responsible for the damage caused.

4. The defendants have resisted the suit.

5. As on the date of filing of the suit the tenth defendant was not alive. The said fact was not brought to the notice of the Court. Against a dead person the proceedings were continued. The trial Court allowed the suit and directed defendants 1 to 6 and 10 and 11 to pay the suit claim of Rs. 50,000 and further allowed interest at the rate of 6 per cent p.a. from the date of maturity of the fixed deposit pertaining to Canara Bank and Tamil Nadu Transport Development Financial Corpn. Ltd., till payment. The first appellate Court set aside the judgment and decree and dismissed the suit. Hence, this second appeal.

6. The following substantial questions of law are framed :

1. Whether the appellant is entitled to claim damages from defendants 1 to 6 and 11, in law ?

2. Whether the appellant is entitled to claim interest from the banks from the date of maturity till payment at contract rate ?

7. It is the contention of the learned counsel for the appellant that defendant No. 4, ITO, acted maliciously and arbitrarily by issuing prohibitory order not to disburse the amount without prima facie material and basis, initiated an enquiry to detect whether the fixed deposit amounts found had escaped Income Tax. The successive ITOs who were seized of the enquiry deliberately delayed the disposal of the case and ultimately the enquiry is concluded in favour of the plaintiff that

the amount found is not taxable. It is said that on account of such vindictive and irrational prejudicial actions of ITOs, the plaintiff is put to harassment and humiliation. The legitimate monies of the plaintiffs was kept out of his control without any legal basis. In view of such mala fide actions the plaintiff holds the officers and the Central Government responsible for the loss and damage suffered by him.

8. After hearing the counsel for the appellant I find that although there may be some sort of grievance but the same cannot be vindicated legally. The ITOs evidently have acted within their jurisdictional powers to find out the source of the fixed deposits, and to know whether it was an escaped income assessable to tax. The IT authorities do have jurisdiction under the IT Act to enquire into the matter and they are also empowered to issue orders of attachment and prohibitory orders to keep the property intact subject to the result of the proceedings. It is not a case that the authorities acted without any exercisable jurisdiction. The further contention that there is inordinate delay in disposal of the proceedings is also not a tenable ground. Mere; delay in disposal of the proceedings does not confer any right for the respondent in the proceedings to proceed against, the State and State authorities. The action of IT officials and the conduct of an enquiry is a quasi-judicial enquiry not an executive action. The officers under the IT Act are clothed with legislative protection for the acts and things done in bona fide discharge of their functions under the provisions of the Act.

9. The counsel contends that any prohibitory order will be valid only for a period of six months unless renewed from time to time. In the present case prohibitory order has not been renewed but, however, it is said that the fourth defendant when approached in 1982 orally stated that the prohibitory order is still in force; and that he cannot withdraw the amount. No credence could be given to such contention. After the expiry of effect of prohibitory order, the plaintiff should have vindicated his right and indeed a writ petition was filed about three years after the expiry of prohibitory order. In view of the reasons stated above, I find that neither the State nor its officers can be held liable to pay damages for initiating an enquiry into the source of deposits and issuing a prohibitory order during the pendency of the enquiry. Therefore, defendants 1 to 6 and 11 cannot be held responsible in law.

9.1. In so far as payment of interest on the fixed deposit amounts by virtue, of the prohibitory order, the banks have withheld the amount. The concerned banks, although served, have remained unrepresented. There is no authenticated material available on record to find out as to what was the contract rate of interest agreed to be payable on the fixed deposits. From the date of deposit till data of maturity the banks have paid interest. However, from the date of maturity till actual payment, on account of prohibitory order the amounts have been withheld and were in possession of the banks. Therefore, the banks are duty bound in law to pay interest on the fixed, deposits at the contract rate subject to fluctuations in the rates as directed by Reserve Bank from time to time. Therefore, I find that the Canara Bank, Tamil Nadu Transport Development Financial Corpn. and the Karnataka Bank are bound to pay interest to the plaintiff on the fixed deposits amounts from the date of maturity till payment at the contract rate subject to fluctuations in the rate of interest. Therefore, first question of law is answered in the negative and the second question of law is, answered in the affirmative as indicated above. 10. In the result, the appeal is partly allowed. The judgment and decree of the appellate Court is set aside and I direct the Canara Bank, Tamil Nadu Transport Development Financial Corpn. Ltd., and the Karnataka Bank to pay interest on the deposit amounts from the date of maturity till actual payment, as directed above, with costs.