
(1968) 02 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. of 409 of 1964

N. Bella Gowder

APPELLANT

Vs

Tahsildar, Coonoor, and Another

RESPONDENT

Date of Decision : 14-02-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22
Income Tax Act, 1961 — Section 179

Citation : (1969) 71 ITR 26

Hon'ble Judges : Veerasami, J

Bench : Single Bench

Judgement

Veerasami, J.—The petitioner, an erstwhile director of a private limited company by name. The Coonoor Talkies Private Limited, prays for

a rule for bidding the respondents from attaching his personal properties for recovery of penalty levied on the company for non-payment of tax due

for the years 1959-60. On January 10, 1962, he filed a declaration of solvency with the Registrar of Companies and on January 19, 1962, there

was a resolution of the company for going into voluntary liquidation. In regard to that matter correspondence followed between the Registrar of

Companies and the petitioner which does not appear to be relevant to the present petition. On November 27, 1962, there was an order levying

penalty. On a certificate issued by the Income Tax Officer, the first respondent has taken recovery proceedings.

2. Two points for the petitioner are urged. One of them is that he had not been negligent or guilty of misfeasance or breach of duty in relation to

proceeding against for recovery of the penalty. The petitioner adds that he has been given no opportunity to show that he is not liable u/s 179 of

the Income Tax Act, 1961. It is not disputed that during the accounting year the petitioner was one of the directors. If that be so, section 179 of

the Income Tax Act makes every person, who was a director of the private company at any time during the relevant previous years jointly and

severally liable for payment of tax and this liability attaches notwithstanding anything contained in the Companies Act, 1956. Nowhere before filing

the writ petition had the petitioner stated that he was not negligent or was not guilty of misfeasance or breach of duty in relation to the affairs of the

company. Quite apart from that, in a petition addressed to the Commissioner of Income Tax not to proceed with recovery he admitted his joint

and several liability, but only pleaded that all the shareholders of the company should be made responsible and not himself alone. Even before us

there is no proof that he has not been grossly negligent or has not been guilty of misfeasance or breach of duty. We are, therefore, of opinion that

u/s 179 the liability to pay the penalty clearly attached to the petitioner. It follows the certificate for recovery proceedings was properly issued.

3. The second point of the petitioner is based on rule 2 of Part I in the Second Schedule to the Income Tax Act. The rule requires that a notice

shall issue from the Recovery Officer calling upon the defaulters to pay the amount specified in the certificate within 15 days from the date of the

service and intimating that in default, steps would be taken to realise the amount due. It is not in dispute that the first respondent, who is the

Recovery Officer, issued no such notice to the petitioner. The contention for the petitioner is that this rule is mandatory and failure to comply with it

will initiate the entire recovery proceedings. We would have been inclined to accept this contention had it not been for the fact that the petitioner

came to have knowledge of the recovery proceedings. He wrote to the first respondent a detailed letter explaining the circumstances why he would

request him not to proceed with recovery. Rule 2 referred to above is more or less in pari materia with rule 22 of Order XXI of the CPC where an

application for execution is made more than two years after the date of the decree. The cases decided under rule 22 are to the effect that the

object of the rule is but to give the judgment-debtor an opportunity to show cause why execution should not proceed, but if the judgment-debtor is

aware of the proceedings, the court has jurisdiction to hold the same and that a fortiori if he appears in the proceedings, he cannot later raise the

objection later raise the objection that they are bad for want of notice. As we mentioned, the petitioner is clearly aware of the recovery

proceedings and in fact participated in them by making a request to the first respondent, for the reasons stated by him, not to proceed with

recovery. The principles of those cases should equally apply in our opinion to recovery proceedings under Part I of the Second Schedule to the

Income Tax Act and in particular rule 2 therein. IT is argued for the petitioner that there is a difference, because rule 22 of Order XXI of the CPC

related to the judgment-debtor. But this difference to distinguish the decisions under rule 22 of Order XXI is without substance because section

179 of the Income Tax Act makes the petitioner jointly and severally liable to the tax in arrears from the company.

4. The petition is dismissed. No costs.