

(1974) 09 DEL CK 0020

In the Delhi High Court

Case No : Civil Revision Appeal No. 364 of 1973

N.B. Films

APPELLANT

Vs

Daya Shanker

RESPONDENT

Date of Decision : 19-09-1974

Acts Referred:

Citation : (1975) 98 ITR 676 : (1975) RLR 47

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : Suresh Sethi and Bharat Inder Singh, for the Appellant;

Judgement

H.L. Anand, J.

(1) The short point that this petition raises is as to the power of the Court to issue process in execution of a decree against the property of a defaulter against whom a notice under Rule 2 of the Second Schedule to the Income Tax Act, 1961 has been issued in respect of payment of outstanding tax.

(2) The respondent obtained a decree against the petitioner from the Additional Judge, Small Causes Court, Delhi on June 2, 1961. Before the execution could be taken out, the petitioner had received a notice from the income tax authorities under Rule 2 of the said Schedule followed by another claiming a total sum of about Rs. 4,000.00 from the defaulter on account of arrears of income tax. The petitioner filed objections to the execution proceedings on the ground that by virtue of the aforesaid notice, no process could be issued by the executing Court pursuant to the decree against any property of the petitioner by virtue of the bar created for the issue of such a process by Rule 16 (1) of the said Schedule. On this objection, the executing Court by an order of May 25, 1973, held that the bar of Rule 16 (1) would operate only if the property sought to be proceeded against in execution had been attached pursuant to the notice issued under Rule 2 and, Therefore, directed the petitioner to show as to whether the income tax authorities had actually attached any property of the petitioner pursuant to the

aforesaid notices. This order proceeded on the basis that the bar of Rule 16 (1) would operate only in respect of the property of the defaulter which had in fact been attached under the Rules. The petitioner was unable to furnish any further material with the result that by an order of June 1, 1973, the executing Court over-ruled the objection on the ground that the income tax authorities had not affected any attachment of any property of the petitioner in pursuance of the notice of demand and the bar of Rule 16 (1) would not, Therefore, be attracted. The execution was directed to proceed and warrant of attachment in respect of certain property of the petitioner was directed to be issued. It is these orders of the executing Court which are sought to be challenged in the present petition.

(3) Learned counsel for the petitioner contends that on a true construction of Rule 16 (1), it must be held that once notice under Rule 2 was issued to a defaulter, he becomes disentitled in terms of Rule 16 (1) to mortgage charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer and that no process against any such property can be issued by any Civil Court in execution of a decree for the payment of the amount. The argument of the learned counsel in sum is that the expression "such property" occurring in Rule 16 (1) must be construed to mean "property" belonging to the defaulter which the defaulter becomes disentitled to deal with by virtue of Rule 16 (1) of the Schedule as a result of notice issued under Rule 2 thereof.

(4) On the other hand, learned counsel for the respondent points out that the issue of notice under Rule 2 does not ipso facto result in the attachment of the property belonging to the defaulter and in fact the certificate issued under Rule 2 could not be executed for a period of 15 days by virtue of Rule 3 and that in certain circumstances, provided by proviso to the said Rule 3, any property of the defaulter may be attached and contends that until such an attachment is levied by the income tax authorities, the Civil Court is not debarred from issuing any process against the property belonging to the defaulter and that the expression "such property" occurring in Rule 16 (1) must be read not with reference to the property referred to in that Rule but to the property referred to in Rule 3, that is the property which has been attached pursuant to the notice under Rule 2 by the income tax authorities.

(5) After hearing learned counsel for the parties, it appears to me that the contention of the petitioner must prevail.

(6) Rule 2 provides for a notice being served upon the defaulter requiring the defaulter to pay the amount specified in the certificate after the certificate has been received by the Tax Recovery Officer from the income tax authorities. Rule 3 provides that the certificate would not be executed until a period of 15 days has expired from the date of the notice apparently because the framers of the Rules felt that some time should be given to the defaulter, to comply with the demand. Proviso I to this Rule however, provides for cases in which a Tax Recovery Officer may be satisfied that no time should be given to the defaulter

because the defaulter was likely to deal with the property in such a manner that the object of the certificate may be frustrated and enables the Tax Recovery Officer to attach the whole or any part of the property of the defaulter. Proviso 2 to this Rule, then provides for furnishing a security to the satisfaction of the Tax Recovery Officer on which the attachment may be cancelled. Rule 4 provides for the mode of recovery of the amount forming subject matter of the notice and includes the attachment and sale of the defaulter's properties. Rule 16 which is primarily intended to prevent private alienation of the property of defaulter and provides for the consequence of attachment is:-(...)

(6) On its plain meaning, the Rule provides for three things. In the first instance, it disentitles the defaulter, on whom a notice under Rule 2 had been served, "to mortgage charge lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Office." In the second instance it debars the civil court from issuing any process in execution of a decree against property which the defaulter becomes disentitled to deal with. In the third instance, it provides that where an attachment has been made under the Schedule, any private transfer, delivery of the property attached or of any interest therein and any payment to the defaulter or any debt, dividend or other monies counter to such attachment shall be void as against all claims enforceable under the attachment.

(7) Even a cursory look at the Rules makes it clear that while sub-rule (1) of Rule 16 deals with the competence of the defaulter to deal with the property as a result of notice under Rule 2 and debars the issue of any process against property referred to in sub-rule (1), sub-rule (2) deals only with such property as may have been made subject matter of attachment. While sub-rule (1), Therefore makes no reference to the property which may have been attached, sub-rule (2) specifically mentions the property which has been attached. The only Rule under which the property can be attached is Rule 3, a provision for which is made in the two provisos to the said Rule. It is Therefore, not possible to accept the contention that the expression "such property" in sub-rule (1) of Rule 16 refer to property which has been attached because if that were so, the latter part of sub-rule (1) would have formed part of sub-rule (2) and the distinction pointed out by me above in the phraseology employed in the drafting of the two sub-rules no manner of doubt that where the consequence of an attachment was to be provided, that provision was relegated to sub-rule (2) but where the consequence of the disability of the defaulter pursuant to the notice under Rule 2 was to be provided, it was relegated to sub-rule (1), and there would, Therefore, be no justification to hold that the expression "such property" used in sub-rule (1) to Rule 16 was intended to qualify property other than that mentioned immediately preceding that expression in sub-rule (1) of Rule 16 itself and was intended to qualify property which is not mentioned in that sub-rule but is mentioned either in sub-rule (2) of Rule 16 or in some other Rules like Rule 3. Such an interpretation would be contrary to the basic principle of interpretation that, unless there's an indication to the contrary, a qualifying expression would

qualify property or person which is referred to in the same section or subsection or in any portion of a provision immediately preceding that.

(8) The reason for the rule that the disentitlement of a defaulter to deal with his property pursuant to a notice of demand under Rule 2 would constitute a bar to any process being issued against such property in execution of a decree, is not far to seek. The English doctrine of precedence of Crown debts over private debts applies to India so that in the absence of any provision in any statute to the contrary, all revenue recoveries or State debt, would get precedence over private debts and the only exception to this rule is to be found in the case of a secured creditor who has the prior right to recover the debt by proceeding against such property. In view of the matter, once a notice of demand is issued and has the effect of restraining the defaulter to deal with the property, any further process in respect of such property from any executing Court would lead to conflict of jurisdictions and unnecessary multiplicity of proceeding. By virtue of the notice and the operation of sub-rule (1) of Rule 16, the property is preserved either for eventual attachment, if found necessary under Rule 3, or for realisation of the claim and until this process is complete, all other processes in execution of a decree obtained by a private person must be held over.

(9) I am, Therefore, of the view that as a result of the notices issued under Rule 2 to the defaulter, he became incompetent to deal with any of his property by virtue of the operation of sub-rule (1) of Rule 16 and this would disentitle any Civil Court from issuing process against the property which the defaulter became incompetent to deal with and that actual attachment of the property under Rule 3 or otherwise was not necessary to attract the application of the bar provided in sub-rule (1) of Rule 16 and in that view of the matter the proceeding in execution were incompetent.

(10) In the result, the petition succeeds. The orders of the execution Court made on May 25, 1973 and June 1, 1973 are set aside and the execution application would be adjourned sine die subject to the right of the respondent to revive it after the notices under Rule 2 have been complied with are cancelled.