(1979) 03 AHC CK 0058

In the Allahabad High Court

Case No : C.M.W.P. No. 104 of 1973

N.N. Samanta — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 02-03-1979

Acts Referred:
Income Tax Rules, 1962 — Rule 8

Citation : (1979) 10 CTR 293 : (1983) 144 ITR 130

Hon'ble Judges : Yashodanandan, J;Satish Chandra, J

Bench : Division Bench

Advocate : M.C. Gupta and J. Swarup, for the Appellant; Ashok Gupta, B.D. Agrawal, J.N. Tewari, R.K. Misra and A.P. Prabhakar, for the Respondent

Final Decision : Partly Allowed

Judgement

Satish Chandra, C.J.—The petitioner had some Income Tax liability outstanding against him. The ITO issued a recovery certificate. The Tax Recovery Officer executed it by attaching and selling house No. 20, Kavi Kalidas Road, Dehradun, together with 5 bighas of land, etc. At the auction this property was sold for Rs. 99,000. It appears that out of the sale proceeds the TRO paid out the amount mentioned in the recovery certificate as well as the costs of the auction. The question was as to what should happen to the balance. The petitioner, who was the defaulter, applied for the refund of the balance to him. Respondents Nos. 5 and 6 also applied to the TRO that the balance be returned to them because they were the mortgagees of the property which was sold and of which the defaulter petitioner was the mortgagor. The TRO issued notice to the petitioner to show cause against this application of the mortgagees. The petitioner filed objections claiming that the TRO should not go into this matter. His duty is to refund the balance to the defaulter. Feeling that the TRO is not going to accede to his request, the petitioner filed the present writ petition in this court.

2. Under Rule 8 of the Tax Recovery Rules framed under the IInd Schedule of the I.T. Act, 1961, the sale proceeds are liable to be disposed of by first paying off

the costs of the auction and then the amount due under the certificate in execution of which the assets were realised. Thereafter he has to pay to the ITO any other amount recoverable under the procedure provided under the Act and under Clause (d) the balance, if any, remaining after the payment referred to in Clause (c), shall be paid to the defaulter. The TRO''s duty, therefore, is to first pay out the items mentioned in Clauses (a), (b) and (c) of the rule and thereafter to pay the balance to the defaulter.

3. Learned counsel for the mortgagees submitted that the TRO has jurisdiction to entertain objections as to the entitlement of the sale proceeds. He contended that the TRO was not lawfully entitled even to pay off the dues of the ITO mentioned in the recovery certificate because those dues could not in law get priority over the mortgage debt due to the mortgagees. We are not disposed to go into these questions because admittedly the mortgagees have already filed Suit No. 44 of 1973 in the civil court at Dehra Dun raising all these pleas. These matters shall be adjudicated by the civil court in due course. It has also been stated in paragraph No. 50 of the counter affidavit that the excess amount of the sale proceeds lying with the I.T. Dept., Dehra Dun, has been attached by the civil court. Since the surplus money has already been made subject to an order of attachment, it will be in the interest of justice fit and proper that the TRO be directed to do his duty to refund the surplus money to the defaulter. In view of the existence of the order of attachment, he cannot in fact refund the money to the defaulter. In our opinion, the TRO would comply with the requirement of the statutory duty of refunding the surplus money to the defaulter, if he transmits the money to the court of the learned II Additional Civil Judge, Dehra Dun, which passed the order of attachment. The money will be subject to further orders of the court where the suit is pending.

4. In the result, the petition succeeds and is allowed in part. Respondents Nos. 1 to 4 are directed to forthwith transmit the balance of the sale proceeds to the court of II Additional Civil Judge, Dehra Dun, in compliance with the order of attachment passed by that court in suit No. 44 of 1973, (S.K. Pahawa v. N.N. Samanta). In the circumstances, the parties shall bear their own costs.