

(1987) 12 GUJ CK 0012
In the Gujarat High Court

Case No : Civil Revision Application No. 1423 of 1983

P.I. Shukla and Another

APPELLANT

Vs

Tribhovandas Hargovandas and Others

RESPONDENT

Date of Decision : 10-12-1987

Acts Referred:

Income Tax Act, 1961 — Section 226

Citation : (1988) 69 CTR 185 : (1988) 1 GLR 676 : (1988) 173 ITR 624

Hon'ble Judges : G.T. Nanavati, J

Bench : Single Bench

Advocate : R.P. Bhatt, for the Appellant; A.L. Shah, J.M. Shah and S.J. Shah, for the Respondent

Judgement

G.T. Nanavati, J.—Petitioner No. 1 is a Tax Recovery Officer; and petitioner No. 2 is the Union of India. represented by the Commissioner

of Income Tax, Gujarat. They are challenging in this revision application the order dated June 27, 1983 passed below, exhibit 20, in Execution

Application No. 732 of 1979 by the learned judge of the City Civil Court, Ahmedabad. Opponents Nos. 1 to 3, who are judgment-creditors and

trustees of Hargovandas Laxmichand Charity Trust, filed Civil Suit No. 3497 of 1976 in the City Civil Court at Ahmedabad against opponents

Nos. 4 to 7 (judgment-debtors) for recovering Rs. 6,55,817.25 together with interest at the rate of 12 per cent. per annum and costs by selling

properties given under equitable mortgage by the judgment-debtors to the judgment-creditors in the year 1971. The said suit was decreed on

August 20, 1978. According to the final decree, the decretal amount has to be paid by the judgment debtors by half-yearly instalments of Rs.

75,000. It is further provided in the decree that in case of default of payment of

any two instalments, the judgment creditors are entitled to execute the decree at once. With respect to realisation of rent and mesne profits of the properties in question from January 1, 1979, one of the trustees has been appointed as a court receiver without remuneration and he is directed to recover rent; and after paying taxes and other expenses to appropriate the net amount towards the instalments payable by the judgment-debtors. It is further provided in the decree that the amount which the court receiver may receive will be considered as having been received towards the instalments. The judgment-debtors committed default in the payment of two instalments; and, therefore, the judgment - creditors have filed Execution Application No. 732 of 1979 for executing the decree by selling the suit properties and other properties of the judgment-debtors.

2. Opponent No. 8 who is one of the tenants in the suit property was paying rent to the Income Tax authorities towards Income Tax and wealth-tax liability of the judgment-debtors. He was doing so in view of the notice given and prohibitory order issued by the Income Tax authorities. On October 14, 1980, he received a notice from the receiver calling upon him to pay rent to him. A second notice to that effect was received by him on June 1, 1981. He, therefore, on July 21, 1981, filed an application, exhibit 21, and took out a Chamber Summons. exhibit 20 for obtaining a direction from the court as to to whom rent should be paid by him. The learned judge by his order dated June 27, 1983, held that the effect of the order of the court contained in the final decree amounts to creating a charge in favour of the mortgagees, i.e., judgment-creditors. In that view of the matter. the learned judge negatived the claim of the applicant who also appeared in those proceedings and claimed priority on the basis that the Crown debt has a priority over other debts.

3. The question which falls for consideration is whether the view taken by the learned judge is correct in law. What is urged by Bhatt, learned advocate for the petitioners, is that the judgment-creditors, in this case, are merely decree-holders and the decree which they have obtained is on the basis of an equitable mortgage created in their favour. Therefore, mere passing of a decree in such a case cannot amount to creating a charge over the rent and/or other income of the mortgaged property. He further submitted that merely because a receiver has been appointed by the court

to collect rent, it cannot be said that for that reason a charge has been created over the rent and other income of the mortgaged property. He also

submitted that in the absence of any charge, the judgment-creditors must be regarded as ordinary creditors and not as secured creditors and as

against the dues of the State, right to receive the money under the decree, must give way.

4. It is, no doubt, true that the common law doctrine of "Priority of Crown debts" applies in this country, as that was a law in force in the territory

of India; and by virtue of article 372(1) of the Constitution of India, it continues to be in force in India. In view of the decision of the Supreme

Court in Collector of Aurangabad and Another Vs. Central Bank of India and Another, , this must be taken as settled law. As pointed out by

Chagla C.J. in Bank of India Vs. John Bowman and Others, , "the priority given to the Crown was not on the basis of its debt being a judgment

debt or a debt arising out of statute, but the principle was that if the debts were of equal degree and the Crown and the subject were equal, the

Crown's right would prevail over that of the subject". It is now well-settled that the Government of India is entitled to claim priority for arrears of

Income Tax due to it from a citizen over the amounts due from him to unsecured creditors. Therefore, the dues of the State will have priority over

the creditors of equal degree to payment out of the assets of a debtor which are distributed by a receiver or an administrator. This rule of priority in

favour of the Crown for the realisation of its dues can only prevail and be enforceable as between unsecured creditors of equal degree and it has

no application where there is any lien, charge or mortgage. The priority of the State can (sic) rank as against a secured creditor n so as to deprive

him of his security or to affect or injure his rights as such secured creditor. Even though this doctrine of "Priority of Crown Debts" is the outcome of

the maxim salus populi suprema lex (regard for the public welfare is the highest law), it applies only where the debts are of equal degree and the

State and a citizen stand on the same footing.

5. In this case, while passing the final decree, the court has directed the receiver to collect rent and other income of the suit properties; and after

paying taxes and other expenses, the court has directed him to appropriate the same towards the instalments payable by the judgment-debtors

under the decree. The amounts which the receiver receives are to be considered as having been received towards the instalments. The trial court could have made the decree executable immediately but looking to the facts and circumstances of the case, it has thought it fit to provide for this mode of execution of the decree. The judgment-creditors could have realised the amount due under the decree by getting the decree executed immediately; but they have now to wait till the decree is executed in the manner provided by the court. It is in this context that we have to appreciate the effect of the direction given by the court with respect to rent and other income to be received by the receiver and appropriation of the balance amount. The balance has to be utilised for payment of instalments. The court has not left any other course open to the receiver. The receiver has to make appropriation only in one manner and that is towards payment of instalments. The court has not thought it fit to retain any control about disbursements to be made out of the amount of rent and mesne profits to be realised by the receiver. Thus, the amounts which the receiver receives under the decree are required to be utilised for only one purpose, viz., payment of instalments. For all these reasons, it can be said that a charge has been created over rent and mesne profits to be realised from the mortgaged property in favour of the judgment-creditors and the judgment-creditors cannot be said to be creditors of equal degree and the State dues cannot have priority over the right of the judgment-creditors.

6. In the result, this revision application fails and is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.