(2008) 03 AHC CK 0158

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No. 854 of 1999

Pramod Kumar Agarwal and another — APPELLANT

Vs

Assistant Commissioner, Trade Tax, Kanpur Nagar and others — RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 03 AHC CK 0158

Hon'ble Judges : Sushil Harkauli, J and Vineet Saran, J

Final Decision : Allowed

Judgement

Sushil Harkauli and Vineet Saran, JJ.—The respondent No. 4 has filed a counteraffidavit today, which is taken on record. We have heard the learned Counsel for the petitioner, the learned Counsel for the respondent No. 4 and the Standing Counsel.

2. It is alleged by the respondents that certain movable property of the assessee (respondent No. 4), which had been attached, was given in the supurdagi of the father of the petitioners. It is also alleged by the respondents that the said father died without handing back the possession of the goods of which supurdagi had been given to him. The assessee (respondent No. 4) whose property was attached towards recovery of arrears of the trade tax had filed an appeal which was allowed and the demand was set aside. Accordingly, the assessee (respondent No. 4) sued the State Government for recovery of the attached property or its value. The suit has been decreed for certain amount of money against the State Government. In the suit, the supurdgar or the legal representatives of the supurdgar were not parties. Apparently, the decree has been or is likely to be executed against the State Government, because of which the State Government (Trade Tax Department) has raised a demand against the petitioners requiring them to make payment of the decretal amount vide letter dated 27.3.1999 (Annexure5 to this writ petition). A representation by the petitioners against such demand has been rejected by order dated 24.5.1999

(Annexure10 to this writ petition).

3. Normally, when the custody of the property is given, the supurdgar is required to furnish security or at least execute a bond by way of security ensuring return of the property of which supurdagi has been given. In case of nonreturn the security or the bond is enforced against the supurdgar. In this case, there is no such security or bond, because neither annexure5 nor annexure10 to this petition refers to any such bond.

4. Neither the Standing Counsel representing first three respondents nor the learned Counsel representing the respondent No. 4 (assessee) have brought to our notice any provision either in U.P. Trade Tax Act or Rules which empowers the State Government or the Trade Tax Department to realize the decretal amount or the value of the goods given in supurdagi as arrears of land revenue or by making such a demand and enforcing the same. Without any security or bond, the State Government must be left to the normal remedy of a civil suit for realizing the property or equivalent money by the State Government from the supurdgar or from the legal representatives of the supurdgar.

5. In the civil suit, it will be obligatory for the plaintiffState to prove that the supurdagi was given as alleged, that the supurdgar failed to return the property without legal justification, the obligation of supurdgar extends to his legal representatives, the extent of the Estate inherited by the legal representatives from the supurdgar to which extent the liability could be enforced to the legal representatives and to meet any other defence which the legal representatives may set up against the suit.

6. Having regard to the above, and leaving it open to the State Government to institute a civil suit, subject to the law of limitation, we quash the demand notice dated 27.3.1999 (Annexure5 to this writ petition) on the ground that it is not supported by any legal provision permitting such mode of recovery.

7. The writ petition is allowed as above. Petition Allowed.