(1969) 09 AHC CK 0016

In the Allahabad High Court

Case No : Civil Revision No. 1070 of 1965

Punjab and Sind Bank Ltd. APPELLANT

Vs

Raja Ram Sri Narain and Others RESPONDENT

Date of Decision : 05-09-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 63

Citation : (1969) 39 AWR 807 : (1970) 75 ITR 402

Hon'ble Judges : S.K. Verma, J

Bench : Single Bench

Advocate : S.N. Kacker and Bharatji Agarwal, for the Appellant; Shanti Bhushan, General and R.R. Misra, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Verma, J.—This is a decree-holder''s application in revision and it arises out of the following facts.

2. The applicant (hereinafter referred to as " the bank ") had obtained a decree for a sum of. Rs. 32,000 from the Court of the 1st Additional Civil, Judge of Kanpur in Suit No. 132 of 1958 against Messrs. Raja Ram Sri Narain and Smt. Naraini Devi, widow of Raja Ram. The bank put the decree in execution and attached house No. 24/88-A, Birhana Road, Kanpur. The house was sold on the 4th of September, 1961 for a sum of Rs. 1,11,000. Another firm of Bombay, Messrs. Bhawani Prasad Girdhar Lal (hereinafter referred to as "the Bombay firm"), had a decree of a Bombay court against Sri Narain, about whom it was said that he was carrying on business in the name and style of Messrs. Raja Ram Sri Narain. This decree was transmitted to the Court of the 1st Civil Judge of Kanpur for execution. When the house was sold, the Bombay firm applied in the Court of the 1st Civil Judge for attachment of the balance of the sale proceeds after satisfaction of the decree in favour of the bank. On the 8th of September, 1961, a precept was received from the Court of the 1st Civil Judge attaching the balance of the sale proceeds for the satisfaction of the decretal amount due to

the Bombay firm.

3. The Judgment-debtors had also to pay a considerable sum (Rs. 2,07,343) as arrears of Income Tax dues. A recovery certificate in respect of arrears of Income Tax dues had been sent by the Income Tax Officer u/s 46(2) of the Indian Income Tax Act to the Collector of Kanpur. The Additional Collector of Kanpur had attached the house mentioned above on the 19th of September, 1955. Naraini Devi filed objections under Order 21, Rule 58, of the Code of Civil Procedure. Her objections were dismissed and she filed a regular suit under Order 21, Rule 63, Civil Procedure Code. When that suit was dismissed, she filed an appeal in this court. This appeal was also dismissed and the attachment made by the Collector on the 19th of September, 1955, was upheld. Because of Naraini Devi''s objections, her suit and her appeal to this court, the auction sale of the house by the Collector remained stayed. In the meantime, the house had been attached and sold in the execution of the decree in favour of the bank.

4. After the house had been sold, the Income Tax Officer filed an application u/s 151 of the Code of Civil Procedure, claiming priority on behalf of the Union of India. He claimed the entire sum towards the satisfaction of the arrears of Income Tax dues as the dues were in excess of the amount realised by the sale.

5. The learned 1st Additional Civil Judge of Kanpur has allowed the application of the Income Tax Officer and the bank has come up in revision to this court.

6. The first point argued by Mr. S. N. Kacker, learned counsel for the bank, was that the Income Tax Officer had no right to move the court u/s 151, Civil Procedure Code. He has contended that the proper procedure was for the Collector to attach the sale proceeds by a notice to the court executing the decree under Order 21, Rule 52, of the Code of Civil Procedure. The short answer to this argument is that an attachment had already been made of the house in the year 1955. That attachment was held to be valid right up to this court. The house was sold while that attachment subsisted as it undoubtedly could be sold u/s 63 of the Code of Civil Procedure. The attachment, however, made earlier would not cease to operate and it still subsisted and it would fasten itself on the sale proceeds. realised by the sale of the house. It was so held by Vivian Bose J. in AIR 1937 80 (Nagpur) There was thus no necessity for the Collector again to attach the sale proceeds under the provisions of Order 21, Rule 52, of the Code of Civil Procedure. Mr. Kacker relied upon a Division Bench decision of this court in Hindustan Commercial Bank Ltd. v. Collector [1964] A.L.J. 505. In that case the application u/s 151, of the Code of Civil Procedure, had been filed by the Collector. The Division Bench held that the Collector''s powers were limited and he could only proceed under Order 21, Rule 52, of the Code of Civil Procedure, and not by means of an application u/s 151 of the Code of Civil Procedure. Before the Division Bench a Full Bench decision of the Madras High Court in MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA., . was cited. In this case a Full Bench of the Madras High Court has laid down that the court has inherent power u/s 151 of the CPC to order the payment of Crown debts to the

Government on the mere application of the Income Tax Officer and no suit was necessary. It was held, further, in that case that Section 46 of the Indian Income Tax Act was not exhaustive and it did not take away the right of the Crown to enforce payment of debts due to it by a mere application. The Division Bench expressed no opinion with regard to the correctness of the Full Bench decision of the Madras High Court. The learned judges, however, distinguished that case on the ground that the application u/s 151, of the Code of Civil Procedure, in the Madras Full Bench case had been filed by the Income Tax Officer and not by the-Collector. That distinction exists in the present case also. The application, u/s 151, of the Code of Civil Procedure, was not made by the Collector but by the Income Tax Officer. The decision of the Divison Bench case of this court is authority only for the proposition that the-Collector cannot move the court u/s 151, but can proceed only under Order 21, Rule 52, of the Code of Civil Procedure. I should also like to mention that in the Division Bench case of this court there had been no prior attachment made by the Collector. This decision, therefore, cannot be of any help to the bank.

7. Mr. Kacker''s next contention was that, once the house had been sold, the sale proceeds cased to be the property of the judgment-debtor and the court, therefore, could not order payment to the Income Tax Officer. He has relied upon a decision of the Calcutta High Court in Basanta Kumar Bhattacharjee Vs. Panchu Gopal Dutta and Others, . In this case it was held that where- an executing court allows a claim for rateable distribution by a decree- holder and all that remains to be done is the ascertainment of the exact amount which each decree-holder is entitled to and payment of the same, the money in the hands of the court can no longer be considered in law to be the judgment-debtor''s money. This case is clearly distinguishable as no order for rateable distribution in the case in hand was passed. In support of Mr. Kacker''s argument, learned counsellor the Bombay firm has cited before me a Division Bench decision of the Lahore High Court in Oudh. Commercial Bank Ltd v. Secretary of State AIR 1935 Lah. 319. There is an observation in this decision to the effect that once the sale takes place the proceeds of the sale cease to belong to the judgment-debtor, but are held by the court in trust for the benefit of the creditor executing the decree and such other creditors as had applied for rateable distribution u/s 73 of the Code of Civil Procedure. This case too is distinguishable because no prior attachment by the Collector had been made.

8. No other point has been urged.

9. The application in revision is dismissed, but, in the circumstances of the case, I make no order as to costs.

