(1994) 01 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4065 of 1993

Ramesh General Store — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 18-01-1994

Acts Referred:

Citation : (1994) 1 WLN 85

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—Heard learned Counsel for the parties.

2. Petitioner has filed the writ petition against the order Annx. 6 dated 26th July, 1993.

3. Petitioner is a proprietorship firm. The petitioner approached this Court by filing S.B. Civil Writ Petition No. 2176 challenging the provisional assessment order and this Court on 6th May, 1993 disposed of the writ petition in limine and observed that since it is an interlocutory order, therefore, the Court will not interfere and left it open to the authority who was hearing the stay petition to consider the matter objectively as the demand in question was in a sum of Rs. 40 lacs. It is alleged that thereafter the matter was taken up before the Additional Commissioner, Commercial Taxes on 17th May, 1993 and it is alleged that a copy of the order passed by this Court on 6th May, 1993 was produced but that was not taken into consideration and the Additional Commissioner dismissed the stay petition, therefore, the petitioner has approached this Court again by filing the present writ petition. Petitioner also filed an affidavit that he alongwith his counsel was present before the Additional Commissioner and produced the copy of the order passed by this Court and the Additional Commissioner after perusing the order returned it back with the observations that he would not take the new papers on record and passed the order on 24th July, 1993 after two months of the hearing. This petition was again admitted and notice was given to respondents and the Additional Commissioner D. Kumar has also filed an affidavit

and denied the allegation of the petitioner and submitted that the order passed by this Court dated 6th May, 1993 was not produced before him.

Both the learned Counsel submitted that let that controversy may not be touched and matter may be disposed of on the merit. I would not like to comment on the conduct of this officer but suffice it to say that the way this stay order has been dealt with by this officer and the affidavit filed by him does not speak very high of him. It is unbelievable that when a favourable order has been passed by this Court, that will not be brought to the notice of the authority. However, I need not to pursue this enquiry further and suffice it to say that the conduct of this officer is not behaving to his position. Mr. Metha, learned Counsel for the respondents submits that a direction may be given to hear the stay petition afresh by the Additional Commissioner (Admn.) Commercial Taxes and he will hear and pass a fresh order.

4. Therefore, in these circumstances, I quash the order dated 24th July, 1993 and remand this case back to the Additional Commissioner (Admn.) Commercial Taxes to hear and pass the order objectively keeping in view the order passed by this Court on 6th may, 1993. Till the stay petition is not disposed of, no coercive steps for recovery shall be taken. I would not have interfered with this interlocutory order but because of the conduct of the officer, I am interferring in this matter, yet this be not quoted as precedent.

5. Writ petition is accordingly disposed of.

