(1997) 09 MP CK 0068

In the Madhya Pradesh High Court

Case No : Civil Revision No. 624 of 1997

Rameshwar Soni APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Income Tax Act, 1961 — Section 132, 132(1), 132(5), 293
Limitation Act, 1963 — Section 14

Citation : (1999) 154 CTR 185 : (1998) 234 ITR 67 : (1998) 1 MPLJ 87

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : A. Dudawat, for the Appellant; N.K. Mody, for Respondent No. 1, R.D. Jain, Senior Advocate and Ami Jain and Sanjay Dwivedi, for the Respondent

Judgement

T.S. Doabia, J.

Heard.

Rameshwar Soni, the present petitioner, figured as plaintiff. He filed a suit against the respondents. The basis for filing this suit in brief is as under :

As per the petitioner/plaintiff he had pledged some gold ornaments worth Rs. 43,200 with respondent No. 3. It so happened that the Income Tax authorities exercising powers u/s 132 of the Income Tax Act, 1961, conducted a search of the premises belonging to the father-in-law of respondent No. 3. The father-in-law was staying in the same house, where respondent No. 3 is residing. After the search, there was seizure of some property including gold ornaments the value whereof is mentioned above. This led to the filing of the present suit. The plea taken was that these ornaments belong to the plaintiff and these were merely pledged with respondent No. 3.

The court below has come to the conclusion that the plaint is liable to be rejected in terms of Order 7, Rule 11 of the Civil Procedure Code, 1908. It is this order passed by the court below which is the subject-matter of this revision petition.

A perusal of Order 7, Rule 11, and more so Clause (d) indicates that if a civil suit cannot be tried then the plaint can be rejected. In the present case, search and seizure was conducted in terms of Section 132 of the Income Tax Act, 1961. A specific remedy has been provided u/s 132(11) of the 1961 Act. This is to the effect that if any person objects for any reason to an order of seizure made under Sub-section (5) of Section 132 of the Act, then such person can within a period of 30 days, from the date of search or seizure file an application before the authority specified in the aforementioned Sub-section. It be further seen that there is a specific bar under the Income Tax Act, 1961, to the maintainability of a civil suit. This is so provided u/s 293 of the Act. No suit in a civil court can be filed to challenge any proceedings taken by the authorities under the Act. In the plaint it is the order of seizure which would ultimately be gone into and, therefore, the bar created u/s 293 would squarely be attracted. The plaint was liable to be rejected in terms of Order 7, Rule 11 of the Civil Procedure Code, and it was rightly rejected. Before parting with this order one thing requires to be taken notice of. This fact is that a period of 30 days is specified u/s 132(5) for challenging the order of seizure. That period is obviously over. The petitioner/ plaintiff is left free to file objections now within a period of 30 days. This period would begin from today. This is because the plaintiff/petitioner under bona fide belief was following a remedy in the civil court. This forum is obviously not available. As such, on the basis of the principle contained in Section 14 of the Limitation Act, 1963, it would be just and proper to allow the petitioner to file objections. As such, if the objections are now filed within a period of 30 days, the respondent authorities would look into the same and would not reject the same on the ground of limitation. The objections if any preferred by the petitioner, the same be disposed of within the period stipulated under the Act.

This petition is disposed of accordingly.

