(2001) 10 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 548 of 2001

Saumil Dilip Mehta APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 18-10-2001

Acts Referred:

Companies Act, 1956 — Section 303, 303(2)
Maharashtra Land Revenue Code, 1966 — Section 267

Citation : AIR 2002 Bom 194 : (2002) 3 ALLMR 489 : (2002) 2 BomCR 594 : (2002) 3 BOMLR 514 : (2003) 113 CompCas 443 : (2002) 2 MhLj 36 : (2004) 138 STC 258

Hon'ble Judges : J.P. Devadhar, J;J.G. Chitre, J

Bench : Division Bench

Advocate : Milind Vasudeo, instructed by Gagrat and Co, for the Appellant; J.A. Udaipuri, for the Respondent

Judgement

1. With consent of the counsel appearing for the litigating parties and as a, very short point arises for adjudication, we are disposing this writ petition at this stage finally.

2. Rule, returnable forthwith with the consent of both the parties.

3. RRC is under execution and that RRC is engulfing the personal property of the petitioner who happens to be one of the directors of M/s Arihant Agro Products Limited. On 1-12-2000 a notice was given by District Collector/Tehsildar, Government Dues Recovery, District Mumbai to M/s Arihant Agro Products Ltd., informing them the claim made by Deputy Commissioner Hyderabad Division, C.S. No.______ and District Collector No.______ as per the books of the District Collector the land belonging to Mr. Saumil D. Mehta was to be attached and the revenue due and payable and till date has not been so paid for the years 1988-1989 to 1992-1993 which is to the tune of a sum of Rs. 22,30,316.00 paise and a notice fee of Rs. 2.00 paise aggregating to Rs. 22,30,318.00 paise ought to be paid by said M/s Arihant Agro Products Ltd., and petitioner Saumil D.

Mehta. The office of the District Collector/Tehsildar, Government Dues Recovery, informed by the said notice that Saumil D. Mehta was called on to pay the said amount within 20 days of the receipt of the said notice and in case of failure to pay the same and/or deposit in the office of the Collector, the same would be recovered by attaching the properties of whatsoever nature and wheresoever situated by selling the same and the proceeds thereof would be deposited as realised therefrom in the Collector''s office. Consequently, a notice was issued in view of the provisions of Section 267 of Maharashtra Land Revenue Code and a demand of Rs. 66,07,453/- was made and that gave rise to this petition.

4. Mr. Vasudeo, appearing for the petitioner, submitted that the petitioner had resigned from the post of Director of M/s Arihant Agro Products Ltd., prior to 3-1-1995 and that was made clear by his letter which was addressed to the Chairman of Arihant Agro Products Ltd., Hyderabad dated 3-1-1995. He pointed out to the said chairman from the previous directors report which was published and printed in the balance sheet of the said company that it was mentioned that the petitioner Saumil D. Mehta had resigned from the post of director which he held in the said company. He brought it to the notice of the chairman that when he was invited to attend 8th Annual General Meeting of the said company which was to be held on 1-12-1994, he had resigned prior to said letter and his resignation was accepted by the company also and a note to that effect was published and printed in the balance sheet of the said company. Therefore, Shri Vasudeo submitted that as the present petitioner had already resigned from the post of director of the said company, the recovering authority was not entitled to attach his personal - private property which had no concern whatsoever with the assets and liabilities of said M/s Arihant Agro Products Ltd. whatsoever. He submitted that without giving him the opportunity of being heard, his private and personal property happens to be attached by the recovery authority which has been entrusted with the work of making the said recovery for Andhra Pradesh Sales Tax Department. He submitted that the said process be quashed because it infringes the fundamental rights guaranteed by the Constitution of India.

5. Mr. Udaipuri, counsel appearing for the respondents, submitted that the resignation has not been tendered by the petitioner by filling in Form 32 and it has not been so tendered in view of provisions of Section 303 Sub-section (2) of the Companies Act. He further submitted that as no legal steps have been taken and the resignation has not been tendered legally, the petitioner cannot seek the protection of this Court as he is seeking by making the prayer which has been indicated by the prayer clause of this petition. In the course of submissions Mr. Udaipuri submitted that a notice was sent to the local address of the petitioner and it was seen by the son of the petitioner who endorsed on it that he was not able to understand the contents of the said notice as it was in the language which he was not understanding. Therefore, Udaipuri submitted that it was the duty of the son of the petitioner to inform him and consequently it was the duty of the petitioner to approach the recovery authority and to make appropriate submissions before it for the purposes of getting the relief. Mr. Udaipuri

submitted that as it was not done, this petition deserves to be and should be dismissed.

6. The submissions advanced by the litigating parties are touching an important point involved in this matter which make us to express our views on the point whether a director of a public or private limited company can resign unilaterally and that too by writing a letter to the chairman of the said company or its secretary. Is it necessary for such a director to fill up form No. 32 and is obliged to give a notice or intimation to that effect to the Registrar of Companies? The question arises for our adjudication is whether that particular director is obliged to give such information to the Registrar of Companies and whether he cannot retire without complying with the said requirement. Keeping in view the provisions of the Companies Act the relevant articles of the Constitution of India, we come to the conclusion that a director of the public limited company or private limited company can tender his resignation unilaterally and without filling in form 32 and without sending a notice to the Registrar of Companies. It is clear that the filling in the said form and giving due intimation and information to the Registrar of Companies is the duty of the Company Secretary and not of an individual director. Suffice it to say that what he has to do is to send in writing a letter informing either the Chairman or the Secretary of the Company, as the case may be, his intention to resign from the post of the Director of the said company. Thereafter the said letter has to be moved in the meeting of the directors of the company, may be ordinary meeting or may be extra-ordinary or special meeting, as the case may be, and the Board of Directors have to take a decision whether the Board is accepting his resignation or not. An intimation should be sent to such director and after such resolution is passed, the Company Secretary is under the obligation to comply with the legal formalities for giving a finishing touch to the resolution which has been passed in the said meeting of the Board of Directors. It is for the Company Secretary to fill in the forms as prescribed and to give due information and intimation to the Registrar of Companies, as the law requires. Thereafter, it has to be so mentioned in all prescribed registers of the company, accounts and balance sheet of the company and thereafter the said fact is to be brought to the notice of the members of the company as early as possible and at the latest in annual general meeting.

7. When a director has tendered his resignation and the Board of Directors has accepted it and has acted on it, such director cannot be held liable for the liability incurred by the said company after the date of acceptance of his resignation except the liability which has been incurred by him for purchase of shares of the said company and nothing more.

8. In the present case, it was necessary for the authority which was executing RRC to give a due notice of its intention to execute the said RRC against the present petitioner and his personal property. It was necessary for the authority executing the said RRC to give him appropriate hearing for the purposes of understanding his case and his grievance. Without doing that, the authority is

not legally competent to execute it by either attaching his personal and individual property or putting it to auction to his prejudice. In the present case when the son of the petitioner had endorsed oh the said notice that he was unable to understand the contents of the said notice because it was in the language which he was not understanding, what information he could have passed to his father? Had it been a case that the said person happens to be an adult person and was knowing the contents of said notice and he had endorsed on the said notice, then he would have been under the legal obligation of passing the said information to his father as the adult member of the family in view of the relevant provisions of Civil Procedure Code. In this case, the further point which is to be noted is that the said authority had never the authority to execute the RRC for the recovery by pulling personal - private property of petitioner. The advocate of the petitioner had also informed the said authority that they are not entitled to either attach or sell the personal and individual property of the petitioner.

9. Thus, in view of the discussion above, we have no hesitation in coming to the conclusion that the said RRC which is tried to be executed by attaching the personal and individual property of the petitioner has to be quashed. The authority i.e. the Sales Tax Authority of Andhra Pradesh Government is at liberty to take appropriate legal remedy for the purpose of recovering its dues from the said M/s Arihant Agro Products Ltd., by following a due process established by law. Needless to point out that the authority executing the said RRC is also bound to give opportunity of hearing to the petitioner before putting the said RRC or any RRC in future to execution. The RRC is to be executed by following due process established by law and not by any other remedy.

10. Thus, the said RRC stands quashed, The attachment, if any, in consequence of the action taken by the authority executing the said RRC stands quashed. The executing authority is declared to have been exonerated from the obligation of executing the RRC which has been passed by the Sales Tax Department of Andhra Pradesh to it for execution.

11. Thus, rule stands made absolute in terms of prayer clauses (a) and (b). The Sales Tax Authority of Andhra Pradesh is at liberty to adjudicate the liability of the petitioner to pay the dues, if any, by following the legal course.

12. This writ petition stands disposed of in the aforesaid terms. No order as to costs.

13. Parties to act on authenticated copy.