(2007) 01 MP CK 0014

In the Madhya Pradesh High Court

Case No : W.A. No. 1314 of 2006

Shri Sudhir Nigam APPELLANT

Vs

Debts Recovery Tribunal and Others RESPONDENT

Date of Decision : 08-01-2007

Acts Referred:

Income Tax Act, 1961 — Rule 57(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29

Citation : (2008) 2 MPJR 360

Hon'ble Judges : A.K. Patnaik, C.J;R.S. Jha, J

Bench : Division Bench

Advocate : Atul Nema, for the Appellant;

Judgement

A.K. Patnaik, C.J.

This is an appeal against the order dated 20.11.2006 passed by the learned single Judge in W.P. No. 16433 of 2006.

The relevant facts for purpose of disposal of this appeal briefly are that for recovery of amount decreed in favour of the State Bank of India by the Debts Recovery Tribunal, Jabalpur, the property of one Shri Rajendra Kumar Agrawal comprising of Krishi Khata No. 107, Survey No. 381/1/3, rakba 3/70 hectares of agriculture land situated in village Segwaya of Tahsil and District Dhar was put to auction by the Recovery Officer of the Debs Recovery Tribunal. The bid of the Appellant of Rs. 1,70,000/- was the highest. As per terms of the auction, the Appellant deposited Rs. 43,325/- on the date of auction representing 25% of the bid amount. The remaining amount was to be deposited within 15 days from the date of the auction i.e. on 2.1.2004. But on 1.1.2004, the Appellant filed an application before the Recovery Officer saying that his father had fallen seriously ill and was required to be hospitalised and that some time should be allowed to the Appellant to deposit the balance amount. Thereafter, the Appellant deposited the balance amount of Rs. 1,27,000/- on 16.1.2004 by demand-draft. After the objections to the auction were disposed of by the Debts Recovery Tribunal, the

Recovery Officer passed orders on 19.1.2004 cancelling the auction on the ground that the balance amount Rs. 1,27,000/- was paid by the Appellant beyond the 15 days time stipulated under the Rules. Aggrieved, the Appellant filed Appeal No. 03 of 2004 before the Debts Recovery Tribunal but by order dated 24.10.2006, the Debts Recovery Tribunal, Jabalpur Dismissed the appeal after holding that under Rules 57 (2) of the Second Schedule of the Income Tax Act, 1961, the auction purchaser was mandatorily required to deposit 75% of the amount on or before the 15th day of the sale of property and the Recovery Officer had no authority to extend the same. Aggrieved by the said order dated 24.10.2006 of the Debts Recovery Tribunal, the Appellant filed W.P. No. 16433 of 2006 by the impugned order dated 20.11.2006, the learned single Judge dismissed the writ petition summarily holding that he did not find any substance in the writ petition.

Mr. Atul Nema, learned Counsel for the Appellant, submitted that Section 29 of the Recovery of Debts Due to Banks & Financial Institution Act, 1993 (for short the Act of 1993) provided that the provisions of the Second Schedule to the Income Tax Act, 1961 and the Income Tax (Certificate of Proceedings) Rules, 1962 as in force from time to time, shall, as far as possible, apply with necessary modifications as if the said provisions and the Rules referred to the amount of debt due under the Act of 1993 instead of income tax. He submitted that the expressions ''as far as possible'' and ''apply with necessary modifications'' would show that the provision of the Second Schedule to the Income Tax Act, 1961 may be deviated from by the Recovery Officer in appropriate cases. In support of this submission, he cited the decision of the Division Bench of the Andhra Pradesh High Court in P. Mohanreddy and Others Vs. Debts Recovery Appellate Tribunal and Others, , in which it has been held that if the legislature has made it explicitly in Section 29 of the Act of 1993 that the rules regarding recovery of tax framed under the Income Tax Act, 1961 would be applicable as far as possible with necessary modification, where 25% of the bid amount was not paid by the auction purchaser immediately after the auction was finalised but was subsequently paid as per auction notice, discretion vests in the Recovery Officer, whether to cancel or not to cancel the same and that if such discretion has been exercised by the Recovery Officer to accept the amount at a later date, the legality and validity of the sale would not be affected. He submitted that in the present case, similar discretion was with the Recovery Officer to accept the 75% of the bid amount even after the 15th day of the sale and the provision of Rule 58 of the Second Schedule of the Income Tax Act, 1961 for conducting the re-sale if the amount is not paid within 15 days of the sale purchase by the auction purchaser, was not mandatory.

With great respect, we cannot agree with the view taken by the Andhra Pradesh High Court in the case of P. Mohanreddy (supra). Section 29 of the Act of 1993 is quoted hereunder:

29 Application of certain provision of income tax Act-The provisions of Second

and third Schedules of the income tax Act, 1961 (43 of 1961) and the Income - tax (Certificate of Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income tax:

Provided that any reference under the said provisions and the rules to the ''Assessee'' shall be construed as a reference to the Defendant under this Act.

It will be clear from Section 29 of the Act of 1993 that the provisions in the Second Schedule to the Income Tax Act, 1961, as in force from time to time, shall, as far as possible, apply with necessary modifications as if the said provisions and the rule refer to the amount of debt due under the Act of 1993 instead of the income Tax. The expression ''apply with necessary modifications'' has to be read along with the words which follow the expression and so read, the provisions to the Second Schedule to the Income Tax Act, 1961 will apply with the modifications that in the provisions of the Rules in the Second Schedule, wherever reference has been made to the amount of income tax, the same will be read as amount of debt due under the Act of 1993. This is because under the Second Schedule of the Income Tax Act, 1961, the Rules have been made for recovery of income tax and if the rules in Second Schedule to the Income Tax Act, 1961, were to apply also to recovery of debt amount due under the Act of 1993, the Rules to the Second Schedule of the Income Tax Act, 1961 have to be so read as if they were also applicable to recovery of amount of debt due under the Act of 1993.

The expression ''as far as possible'' in Section 29 of the Act of 1993 would mean that where a particular rule of the Second Schedule of the Income Tax Act, 1961 cannot possibly be applied to the proceedings for recovery of amount of debt due under the Act of 1993, such rule obviously cannot be applied for recovery of amount of debt due under the Act of 1993. But where a particular rule of the second Schedule of the Income Tax Act, 1961 can be applied for recovery of amount of debt due under the Act of 1993, a deviation from the rule cannot be made under the cover of the said expression as far as possible'' because if such a deviation is made, the main object of the provisions of Section 29 of the Act of 1993 which is to apply the provisions of the Second Schedule of the Income Tax Act, 1961 to recovery of the amount of debt due under the Act of 1993 would be frustrated.

We may now turn to the relevant provisions of the Second Schedule to the Income Tax Act, 1961 applicable to sale by auction. Rule 57 and 58 which are relevant for the purpose of this appeal are quoted herein below:

Deposit by purchaser and resale in defaults-

(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale,

and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the propety.

Procedure in default of payment

In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the salt, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

It will be clear from Sub-rule (l) of Rule 57 that on every sale of immovable property, the person declared to be the purchaser shall pay immediately after declaration, a deposit of twenty-five per cent on the amount of his purchase money to the officer conducting the sale and in default of such deposit, the property shall forthwith be resold. In the present case, the Appellant had complied with the requirement of Sub-rule (1) of Rule 57 in regard to deposit of 25% on the amount of purchase money immediately after the declaration of sale in favour of the Appellant. Sub-rule (2) of Rule 57, further provides that the full amount of the purchase money payable shall be paid by the purchaser to the Recovery Officer on or before the fifteenth day from the date of the sale of the property. In the present case, admittedly the Appellant had not deposited the remaining 75% of the purchase money or before the fifteenth day from the date of sale of the property. Rule 58 provides that in default of payment within the period mentioned in Rule 57, the deposit may, if the Recovery Officer thinks fit, after defraying the expenses of the sale be forfeited to the Government and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Interpreting a similar provision in Order 21 Rules 85 and 86 of the Code of CPC , the Supreme Court has held in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, that if the payment of the balance of the purchase money is not made within the period of fifteen days, the court has the discretion to forfeit the deposit and there the discretion ends, but the obligation of the Court to resell the property is imperative in view of the language used in the rule. The law laid down in Manilal Mohanlal v. Sayed Ahmed (supra) was reiterated by the Supreme Court in Balram Vs. Ilam Singh and others, while interpreting the same provision of Order 21 rules 85 and 86 of the Code of Civil Procedure. In Gangabai Gopaldas Mohata Vs. Fulchand and others, , the Supreme Court considered similar provisions of the Maharashtra Municipalities (sale of Distrained or Attached Movable and Immovable Property) Rules, 1967 framed under the Maharashtra Municipalities Act, 1965 and found on a reading of Rule 8 (2) and Rule 13 of the said Rules that the requirement to pay the balance 75% of the purchase money was mandatory and the consequence of non-payment of such balance amount during the fixed period must peremptorily visit the purchaser and neither the Chief Officer nor even the Municipal Council has power to relax or even condone the delay and accept the delayed payment and if any officer accepted the money after the period fixed under the rules, the action of the officer had no support of law and no legal effect would flow there from and the sale consequently become void.

Keeping in mind the aforesaid three decisions of the Supreme Court, if we interpret the provisions of Rule 57 and 58 of the Second Schedule applicable to recoveries under the Act of 1993, we find that it is clearly provided in Sub-rule (2) of Rule 57 that the full amount of purchase money payable shall be paid by the purchaser to the Recovery Officer on or before the fifteenth day from the date of the sale of the property and it is further provided in Rule 58 that in default of payment within the said period," the property shall be resold" and the defaulting purchaser shall forfeit all the claim to the property or to any part or sum for which it may subsequently be sold. Hence, the mandatory consequence of the auction purchaser not paying the full amount of the purchase money within 15 days from the date of the sale is that the Recovery Officer has to resell the property and he has no discretion in the matter, and the auction purchaser cannot have any claim to the property or to the price of the property after such resale.

The language of Rule 58 of the Second Schedule made applicable to recoveries under the Act of 1993 further shows that in default of payment within the period mentioned in Rule 57, the deposit may, if the Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government. The word ''may'' vests discretion in the Recovery Officer either to forfeit the deposit after defraying the expenses of the same or to refund the same. The Recovery Officer in the present case has already refunded the 75% of the amount of purchase money but has retained 25% of the purchase money. After defraying the expenses of the second sale, the Recovery Officer will have to refund the balance of the 25% unless he has good and relevant reasons to retain the same. The Recovery Officer is therefore directed to pass orders on the application of the Appellant for refund of the balance 25% of the purchase money after the resale. In case, the Appellant is aggrieved by the order that will be passed by the Recovery Officer with regard to refund of the 25% of the purchase money, it would be open for him to move the Debts Recovery Tribunal or this Court as may be advised.

With the aforesaid directions, the writ appeal is disposed of.

