(1963) 01 AHC CK 0019

In the Allahabad High Court

Case No : Civil Revision No. 1227 of 1960

State of U.P. APPELLANT

Vs

Sant Lal Har Prasad RESPONDENT

Date of Decision : 02-01-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73, 73(3)
Income Tax Act, 1922 — Section 46(2)
Uttar Pradesh Sales Tax Act, 1948 — Section 8(1), 8(8)

Citation : AIR 1963 All 495

Hon'ble Judges : S.C. Manchanda, J

Bench : Single Bench

Advocate : L.D. Joshi, for the Respondent

Final Decision : Allowed

Judgement

S.C. Manchanda, J.—This is a revision by the State of Uttar Pradesh against the order of the Additional Civil Judge, Dehradun dated the 12th of November, 1960 whereby [t was considered that the demand for Income Tax had priority over unsecured creditors but not the demand for Sales-tax.

2. There were amounts lying in the Court of the Civil judge belonging to Sant Lal who was in arrears of Income Tax as well as Sales-tax dues. The Collector by an application requested the Civil Judge to attach Rs. 1195.62 nP. due as Income Tax and Rs. 1265.50 due as Sales-tax. The lower court took the view:

"In my opinion, the order is good so far the Income Tax dues. The learned counsel for the decree-holders also conceded that there is a priority to recover the Income Tax dues. .... I do agree with this argument that the Sales-tax dues do not get any priority before other dues. The money is in the hands of this Court and now it can be distributed only under-section 73 of the C. P. C."

The view then is manifestly unsustainable. The wordings of Sec. 46(2) of the Income Tax Act, 1922 and Section 8, Sub-clause (1) and Sub-clause (8) of the U.

P. Sales-tax Act are in pari materia and therefore the distinction drawn by the Civil Judge between priority that can be given to Income Tax dues and Sales-tax dues is without substance.

3. The learned Civil Judge failed to notice Sub-clause (3) of Section 73 of the C. P. C. which runs :

"Nothing in the section affects any right of the Government."

The provision is clear and mandatory and prevents Government, be it the Union Government or the State Government, from merely obtaining rateable distribution along with other unsecured debtors and gives government priority in respect of its dues. Further there is no warrant for distinguishing the right of Government to priority in respect of arrears of Income Tax and Sales-tax. Therefore, where there is a competition between private unsecured creditors ''and the State the claim of the State will prevail. Income Tax Officer, Ward C, Sangli and Another Vs. Chandanbai Balaram Doshi and Others, and MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA., .

4. For these reasons the order of the Civil Judge, in so far as it relates to Sales-tax dues of the State is set aside and he is directed to also attach Rs. 1265.50 nP. due in respect of arrears of Sales-tax.

5. The revision is allowed but in the circumstances of the case the parties are left to bear their own costs.

