

(1965) 09 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Revision No. 369 of 1962

Union of India (UOI)

APPELLANT

Vs

Mahadeo Prashad and Others

RESPONDENT

Date of Decision : 15-09-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Income Tax Act, 1922 — Section 46(2)

Citation : (1965) RLW 455

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : C.M. Lodha, for the Appellant; D.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.S. Dave, C.J.—This is a revision application by the Union of India against the order of the Civil judge, Jaipur City, dated the 23rd May, 1962, passed in execution proceedings.

2. The facts giving rise to this revision are as follows. Respondent No. 1 Shri Mahadeo Prashad was assessed by the Income Tax Officer D-Ward Jaipur for the assessment year 1945-46 for an amount of Rs. 18,566/2/- which was computed on his total income of Rs. 90,000/-. The assessment was finalised on the 28th January, 1955. A certificate for the realisation of Rs 18,566/2/- was issued u/s 46(2) of the Indian Income tax Act, 1922, and was sent to the Collector on the 30th January, 1956. On the 1st July, 1957, Mahadeo Prashad mortgaged a house belonging to himself in favour of Shrimati Naraini Devi respondent No. 2 for Rs. 3,500/-. We are not concerned with this transaction in this case. What we are concerned with is a simple money decree obtained by Radheyshyam respondent No. 3 against Mahadeo Prashad. This decree was passed on the 24th November, 1959, for Rs 5177/5/- It may be noted here that Mahadeo Prashad's house was got attached by Radheyshyam on the 25th November, 1957, before judgment that is during the pendency of the suit After Radheyshyam got the decree in his

favour, he put it into execution and in execution proceedings, the judgment-debtor's house was sold for Rs. 5111/8/- in favour of Kirorilal, respondent No 4. The purchase price was deposited in court by the auction purchaser. Before the payment of the said amount to the decree-holder, however, an application u/s 151, C. P. C., was filed by the Income Tax Officer, D-Ward, Jaipur in the Court of the Civil Judge, Jaipur City, on the 4th February, 1961 praying that the whole of the amount, that is, the sale proceeds of the house be paid to him to be utilised towards the payment of arrears of income tax outstanding against Mahadeo Prashad under the certificate issued u/s 46(2) on 30th January, 1956. This application was contested by Radheyshyam decree-holder. The Civil Judge dismissed the application of the Union of India on the 23rd May, 1962. Against that order dated the 23rd May, 1962 the Union of India filed the present revision application. It was heard by a learned single Judge of this Court; but since he thought that important questions of law were involved, he considered it proper to refer the case to a Division Bench. This is how the case has come before us.

3. The questions that fall for consideration are (1) whether the claims of the Union in respect of the Income Tax dues have priority over decrees of unsecured decree-holders and (2) whether it was open to the civil Court to make payment of the Income Tax dues on the application of the Income Tax Officer u/s 151, Civil P. C.

4. So far as the first question is concerned, it is common ground between the parties that the matter stands concluded by a recent decision of their Lordships of the Supreme Court in Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, In that case the question that arose for their Lordships' consideration was whether the recovery of Income Tax dues was governed by the doctrine of priority of State debts and whether this doctrine was "law in force" within the meaning of Article 372(1) of the Constitution. Their Lordships made a survey of the principles of Hindu jurisprudence as well as the doctrine of the Prerogative of the Crown under the British laws in the matter of the precedence of State dues over the dues of private creditors and they came to the conclusion that the State dues pertaining to the arrears of Income Tax must receive priority over private debts. The learned single Judge has also come to the conclusion on the consideration of the various decisions of the Indian High Courts placed before, him that the arrears of Income Tax dues must receive priority over debts of unsecured creditors. In the circumstances we agree with the learned single Judge in his conclusion on the first question.

5. Turning now to the second question, we may observe that the matter has received consideration in several decisions of the Indian High Courts, the most notable of which is a decision of the Madras High Court in Manickam Chettiar v. Income Tax Officer, Madura A I R 1938 Mad 360 In that case the judgment-debtor was assessed to Income Tax and the tax was to be realised from him when his property was attached and brought to sale by a decree-holder. The

Income Tax Officer merely filed an application before the Court for the payment of the Income Tax dues without reporting to the procedure laid down in Section 46 of the Income Tax Act. The question that arose for consideration was whether on such an application which could be regarded only u/s 151, Civil P. C., the payment of the Income Tax dues could be made by the Court on account of the precedence of the State dues over the dues realizable by private creditors. The learned Chief Justice who delivered the judgment of the Court made a review of the previous decisions and proceeded to observe that Section 46 of the Income Tax Act was not exhaustive and as there were no express words taking away the right of the Crown of enforcing payment of its dues by other methods, Section 46 of the Income Tax Act would not impose a bar to an application u/s 151, Civil P. C. The learned Chief Justice also observed that in such a situation "both right and convenience demand that the Court should exercise its inherent power." Varadachariar J. and the other learned Judge agreed with the learned Chief Justice. Varadachariar J, who had referred this question to the Full Bench had indicated his own doubts in the order of reference and though he still observed that those debts had not been wholly dispelled, he did not think them serious enough to warrant any dissent from the conclusion recorded by the learned Chief Justice. Varadachariar J. also recognised that "the balance of convenience certainly seems to be on favour of the view indicated in the judgment just delivered."

The learned third Judge also adopted the same line of reasoning.

6. In *Kaka Mohamed Ghouse Sahib and Co. Vs. United Commercial Syndicate And Others.*, which is another decision of the Madras High Court, the learned Judges followed Manickam Chettiar's case AIR 1938 Mad 360 (Supra). It was reiterated that the Court has inherent power to order payment of the sale proceeds to the income tax officer in order to satisfy the claim for arrears of Income Tax due by the debtor. They also took note of the consideration that the Court must pay money in its hands to the person entitled to it.

7. The Bombay High Court in *GOVERNOR-GENERAL IN COUNCIL Vs. CHOTALAL SHIVDAS and ANOTHER.*, has also taken the same view. The learned Judge further observed by way of an additional argument that Section 73(3) of the CPC by necessary implication allows the giving of such assets to the Crown,

8. The Andhra Pradesh High Court in *Chaganti Raghava Reddy Vs. State of Andhra (now Andhra Pradesh) and Others*, the Kerala High Court in *State of Kerala Vs. E.P. Mathew*, and the Punjab High Court in *Excise and Taxation Officer Vs. Gauri Mal Butail Trust*, have fallen in line with the Madras view.

9. Shri D.P. Gupta, learned counsel for the respondents invited our attention to *Oudh Commercial Bank Ltd. v. Secy. of State* A I R 1935 Lah 319 and *Associated Pictures Ltd. Vs. Union of India (UOI) and Others*, in support of the opposite view. In the former case, it was held by the learned Judges of the Lahore High Court that it was not open to an executing Court to entertain a claim on behalf of

the Government in respect of Government dues in the absence of a decree in support of it. In considering the implications of Section 73(3) of the Code of Civil Procedure, the learned Judges observed that this section did not confer any jurisdiction on the executing Court to entertain any claim on behalf of the Government in the absence of any decree in support of it. This sub-section only saves the rights of the Government independent of the section, such as they might be and merely appears to have reference to the right of priority which can be ordinarily claimed in respect of the debts due to the Government. But where the Government had not obtained any decree in respect of its dues which were in that case in respect of the premium and arrears of rent claimed by the Government, the Executing Court, according to the learned Judges, had no jurisdiction to go into the merits of that claim. This case is clearly distinguishable because the dues of the Government were in respect of the premium or rent due to it, about which it cannot be unhesitatingly said that such dues related to the exercise of the sovereign powers of the State because rents and premia could also be realisable even by private landlords. Thus this decision is not of much assistance to the learned counsel.

10. In the Associated Pictures Ltd. Vs. Union of India (UOI) and Others, certain sale proceeds were held by the executing Court and the judgment-debtor was also found to be in arrears of payment of Income Tax. The Government wanted to recover arrears of tax by an application u/s 151, C. P. C. made before the Court. It was observed that when the Income Tax Act itself laid down a procedure for realisation of such tax dues (vide Section 46 (2) of the Income Tax Act) the Income Tax authorities should proceed to realise their dues only in accordance with Section 46 (2) of the Income Tax Act. That being so, according to the learned Judge, Government could not be permitted to invoke the powers of the executing Court u/s 151, C. P. C. for making payment of such tax dues to the Government. While it cannot be denied that there is something to be said in favour of this view, yet on account of the preponderance of judicial opinion of various High Courts being in favour of the petitioner, we are also inclined to take the view that it is competent to the executing Court to make payment of the tax dues to the Government in exercise of its powers u/s 151, C. P.C.

11. In the circumstances we allow the revision application and hereby set aside the order of the learned Civil Judge, Jaipur City dated the 23rd May, 1962, and hereby direct him to make the payment of the Income Tax dues to the petitioner. In the circumstances, we leave the parties to bear their own costs.