(1989) 09 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 580 of 1988

Varinder Kumar Jindal APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 26-09-1989

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Income Tax Act, 1961 — Section 132

Citation : (1990) 81 CTR 111 : (1990) 184 ITR 292 : (1990) 49 TAXMAN 144

Hon'ble Judges : G.M. Majithia, J

Bench : Single Bench

Advocate : R.L. Sarin, for the Appellant; Ashok Bhan, Senior Advocate and A.K. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—The plaintiff has assailed the order of the first appellate court dismissing the application under Order 39, Rules 1 and 2 of the CPC filed with the suit for mandatory injunction directing the defendant-respondents to return the case files and a sum of Rs. 37,331 as mentioned in annexures A and B appended to the plaint, in this revision petition.

2. The facts :

The petitioner resides with his father at Club Road, Sangrur. A search was conducted u/s 132 of the Income Tax Act, 1961 (for short "the Act"), on May 16, 1986, pursuant to the warrant of authorisation issued by the Commissioner of Income Tax, Patiala, in the residential house of Shri Om Parkash Jindal. During the course of search, cash amounting to Rs. 2,29,334 along with certain documents was found in the residential premises of the assessee. Cash amounting to Rs. 2,00,000 was seized along with the documents as per the panchnama prepared at the time of the search. The plaintiff filed a suit for a mandatory injunction for a direction to the respondents to return a sum of Rs. 37,331 and the documents mentioned in annexures A and B appended to the plaint on the ground that the amount belonged to him and that the papers which were taken into possession by the authority in the course of search were the case files of the clients.

3. The respondents'' filed a written statement and admitted that the search was conducted in the residential premises of Om Parkash Jindal and the proper orders for release of the cash amount as well as the valuables will be passed by the competent authority u/s 132(5) of the Act after proper enquiry and proper examination of the documents. The defendants also pleaded that the civil court had no jurisdiction to try the dispute in view of the mandatory provisions of Section 293 of the Act.

4. The appellate court on examining the entire material before it, came to the conclusion that the Income Tax authorities required the documents, which had been seized from the residential premises of the assessee, for determining the tax liability of Om Parkash Jindal, the father of the plaintiff-petitioner. It also found that in case the original documents are returned to the plaintiff, it may create complications since these may be destroyed and the Income Tax authorities will not be able to determine the Income Tax liability in the absence of these record and the learned judge on the basis of the material produced before him refused to exercise discretion under Order 39, Rules 1 and 2 of the CPC and dismissed the application. However, in view of the concession made in the written statement, some documents which were mentioned in annexure "A" appended to the written statement were ordered to be returned.

5. The discretion exercised by the first appellate court in the matter of refusing temporary injunction cannot be interfered with in revision. There is nothing to suggest that the order passed by the first appellate court can be termed as perverse. The order cannot be set aside merely on the ground of an error in the judgment of the lower appellate court in the exercise of its jurisdiction. As held by the first appellate court, the plaintiff has failed to make out a prima facie case for grant of interim injunction in his favour.

6. I do not find any infirmity in the just order passed by the learned appellate court. The revision petition is dismissed with no order as to costs.

