
(2001) 05 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2597 of 2001

V.K. Malik

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 62

Citation : (2002) 126 STC 95

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : R.P. Sawhney and S.K. Heraji, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This revision is directed against the order dated February 22, 2000 passed by the learned Civil Judge (Junior Division), Faridabad.

2. Vide impugned order dated, the learned trial court answered the preliminary issues in regard to jurisdiction of the civil court against the plaintiff giving rise to the filing of the present revision.

3. The plaintiff stood surety for Rs. 1 lac under the Haryana General Sales Tax Act, 1973 and to the extent of another sum of Rs. 1 lac under the Central Sales Tax Act, 1956, for Silver Flame Appliances, Faridabad, defendant No. 4 in the suit. The case of the plaintiff was that he never stood surety for defendant No. 4 but had simply signed surety bond brought to him by defendant No. 4 on June 27, 1985. The Sales Tax Department issued notice to the plaintiff for recovery of arrears of sales tax to the extent of Rs. 1,63,537 under the Haryana General Sales Tax Act and Rs. 4,74,500 under the Central Sales Tax Act. Thus impugned notices dated January 3, 1996 was followed by another summon dated January 22, 1996 issued by defendant No. 3 in the suit. The plaintiff challenged these notices and summons obviously based upon the orders of assessment, which have been passed under the provisions of the Haryana General Sales Tax Act and

Central Sales Tax Act. The plaintiff submitted a reply to these notices on June 5, 1996. Again summons were issued on June 10, 1996 requiring the plaintiff to appear before the authorities concerned on June 14, 1996. Again through counsel again plaintiff submitted reply on June 14, 1996 and then vide suit challenged the notice and summons dated January 3, 1996 and January 22, 1996 respectively on different grounds. The defendants took up the plea that the jurisdiction of the civil court was barred u/s 62(2) of the Haryana General Sales Tax Act, 1973, as such, the suit was not maintainable and the suit was also contested on merits.

4. Learned trial court framed issue on November 6, 2000 and treated issue in regard to jurisdiction of the court as a preliminary issue.

5. Learned counsel appearing for the petitioner, while relying upon the judgment of the honourable Supreme Court in the case of *Dhulabhai v. State of Madhya Pradesh* 1968 22 STC 416 , contended that the learned trial court has fallen in error in law in answering the issue against the plaintiff.

6. From the above narrated facts, it is apparently clear that the plaintiff had admittedly signed the forms which were submitted to the sales tax authorities as surety bonds for payment of the dues assessed by the authorities concerned in accordance with the provisions of the Act. The order of assessment was primarily a question between the department and defendant No. 4 and there was obviously no challenge to such orders before the appropriate forum/authority. Whether defendant No. 4 had obtained the signatures of the plaintiff for the purpose of applying and securing the sales tax number or was it submitting as surety bond is primarily a matter between defendant No. 4 and the plaintiff in the suit. The action of the respondent-authorities could hardly be questioned, as it was recovery in furtherance to the assessment order passed in accordance with law. The Legislature in its wisdom has barred the jurisdiction of the civil court under the provision of Section 62(2) of the Haryana General Sales Tax Act and such bar cannot be permitted to be defeated by adopting such indirect method of stopping the recovery of the revenue. It is settled principle of law that what is not permitted to be done in law directly, the same cannot be done indirectly. Thus, the plaintiff cannot derive any advantage from the case of *Dhulabhai* 1968 22 STC 416 . In that case, the honourable Supreme Court had held that levy of tax and its recovery was illegal being against the constitutional prohibition in Article 401 of the Constitution, as such the jurisdiction of the civil court was not ousted as the recovery of tax was violative of constitutional provisions. This is certainly not the situation in the present case.

7. The plaintiff had received a notice and summons as back in January, 1996. While he received the notice and submitted reply to the authorities concerned, if the defendant No. 4 has made misrepresentation to the plaintiff, the plaintiff may have the cause of action against defendant No. 4 in its individual capacity and may recover the amount paid by him, being bound by the terms of the surety bonds submitted by the defendants, which was admittedly signed by the plaintiff

on 27th June, 1985. No explanation has been rendered on record as to what action the plaintiff has taken since 1985 till year 1996.

8. At this stage, it may be appropriate to make reference to the judgment of this Court in the case of Byford Leasing Limited v. Excise and Taxation Officer, Gurgaon (Civil Revision No. 3929 of 1999 decided on October 14, 1999) 2002 126 STC 89 where the court held that Section 62 imposes a complete bar to the very maintainability of the suit in relation to the powers exercised by the authorities concerned within the provisions of the Act. It cannot be said on the facts and circumstances of the case that the action of the respondent is without jurisdiction or is outside the purview of the statutory provision. The notice and summons issued cannot be termed as illegal or non est, ex facie.

9. The plaintiff has already filed replies to the show cause notices and it is for the authorities concerned, which are exercising powers under the statute to come to a conclusion in accordance with law.

10. The learned trial court has rightly applied the ratio of Dhula-bhai case 1968 22 STC 416 , in holding that the civil court has no jurisdiction to entertain the suit, as the case of the plaintiff fell in none of the exceptions formulated by the honourable apex Court in that case.

Resultantly, this revision is dismissed in limine.