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Saraswathi Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-17-1994

Reported in : ILR1994KAR3739; 1994(5)KarLJ230

Judge : Kumar Rajaratnam, J.

Acts : Karnataka Excise Act, 1965 - Sections 63

Appeal No. : W.P. No. 7375 of 1991

Appellant : Saraswathi

Respondent : State of Karnataka

Advocate for Def. : V.S. Ganachari, H.C.G.P.

Advocate for Pet/Ap. : A. Jagannatha Shetty, Adv.

Judgement :
ORDER

Kumar Rajaratnam, J

1. The petitioner's husband one late K. Sadashiva Havaldar, secured an excise contract for the taluks of Sagar and Sorab during the excise year 1981 -82 for vending of arrack in retail on a monthly rental of Rs. 2,60,100/- and for Rs. 85,000/- respectively. Arrears to the tune of Rs. 4,35,100/- being the rental amount was found due from the deceased Sadashiva. As against the said amount, the

interest was calculated at 6 1/4% as that was the prevailing rate of interest and a sum of Rs. 1,16,009.50 was added up to the said amount.

2. The late Sadashiva sought remission of the kist. But it was -rejected by the Deputy Commissioner of Excise, Shimoga District, Shimoga. He however, recommended for payment of instalments. By order dated 10.12.1984 he granted 36 instalments with interest.

3. It is not in dispute that the petitioner's husband late Sadashiva paid the entire amount with interest and fully discharged his liabilities. Unfortunately for the petitioner, Rule 15 of the General Condition Rules was amended by enhancing the rate of interest from 6 1/4% to 18% p. a which came into effect from 1.7.1983. The second and third respondents calculated the difference of interest at 11 1/4% which amounted to a sum of Rs. 1,50,000/-. The petitioner was served with a demand notice with respect to the difference of interest. Aggrieved by the said notice, the petitioner preferred a Revision Petition before the first respondent in No. HD 144 ELC 89, invoking the provisions of Section 62 of the Karnataka Excise Act (hereinafter called as 'the Act' only). During the pendency of the Petition, the petitioner's husband late Sadashiva Havaldar died. Accordingly a Memo was filed before the first respondent that the Revision Petition cannot be prosecuted in view of the death of the husband of the petitioner. It is informed from the Bar by the learned Counsel for the petitioner that the said Revision Petition abated. It is only after that Annexure-C was passed demanding a sum of Rs. 2,55,910.25 from the petitioner for the dues incurred by her husband. Presumably this Rs. 2,55,910.25 is the total sum after calculating interest on 1,50,000/- which was the original liability that was claimed against the petitioner's husband. The learned Counsel for the petitioner submits that Annexure-C is unsustainable in law for the reason that no show cause notice was issued to the petitioner as to why she should not be made liable for the liability incurred by the husband for the arrears for the Excise Year 1981 -82. He further submits that as per the lease contract entered into between the late Sadashiva Havaldar and the respondents in the agreement, there are no words in the lease deed which terms as 'legal heirs', 'assigns', 'administrators' and 'legal representatives' binding the legal heirs of the deceased for any arrears of excise dues. The learned Counsel further submits that a clear

reading of Section 63 would show that the liability can be recovered only from a person who is primarily liable to pay the same or from the surety, if any, as if they were arrears of land revenue.

Section 63 reads as follows:-

'Recovery of Government dues:-

1. The following moneys, namely:-

(a) all excise revenue.

(b) any loss that may accrue when in consequence of default, a lease under Section 17 has been taken under management by the Deputy Commissioner or has been resold by him, and

(c) of amounts due to Government by any person on account of any contract relating to the excise revenue, may be recovered from the person primarily liable to pay the same or from his surety, if any, as if they were arrears of. land revenue.

2. When a lease has been taken under management by the Deputy Commissioner, or has been re-sold by him, the Deputy Commissioner may recover, in the manner authorised by sub-section (1), any money due to the defaulter by any leses or assignee.'

4. I see much force in the contention of the learned Counsel for the petitioner that the liability that has been incurred by the husband of the petitioner ought not to be fastened on to the petitioner unless a show-cause notice is issued to the petitioner and that they intend to proceed against any properties that are standing in the name of the petitioner's husband. It is not open to the respondents to mulct the liability of the husband of the petitioner by making a claim against the petitioner without issuing show cause notice. If such show cause notice was in fact issued to the petitioner it would have been open to the petitioner to contend all the defences that are available to the petitioner. In these circumstances on the facts of this case, I am of view that the notice issued against the petitioner making the petitioner liable for the liability accrued during the life time of the petitioner's

husband is not sustainable in law and is liable to be quashed. The question of fact whether the petitioner is liable if there are any properties, that may have come into her hands or whether the lease agreement entered into by the petitioner binds the petitioner to the liability is kept open. In view of the fact that the petitioner has been called upon to pay the liability of the husband of the petitioner without due process of law and without show cause notice being issued, the notice dated 28.12.1990 Annexure-C is quashed as contrary to law. There will be no order as to costs.

5. Govt. Pleader appeared on behalf of the respondents. The respondents have not filed any counter although the Writ Petition is of the year 1991. However, he was heard on the merits of the case.

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