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Court : Supreme Court of India

Decided On : Jul-31-1997

Reported in : (1997)11SCC686

Judge : S.P. Bharucha and; V.N. Khare, JJ.

Appeal No. : Civil Appeals Nos. 15102-15105 of 1996

Appellant : Coimbatore Pioneer Rolling Mills

Respondent : Deputy Commissioner of Sales Tax (Law), Ernakulam

Disposition : Appeal allowed

Judgement :

S.P. Bharucha and; V.N. Khare, JJ.

1. Leave granted.

2. In execution of a decree obtained by Respondents 1 to 4 against Respondent 5, the appellant Bank has been ordered by the executing court to pay the amount of Rs 69,891.30p. This order was made pursuant to an order of attachment made on 29-10-1992 attaching the bank account of Respondent 5 with the appellant Bank, on the assumption that Respondent 5 had a sum of Rs 1,18,011.30p in his

account with the appellant Bank. Admittedly, this impression resulted from an erroneous entry made in the bank accounts when in fact no such amount was to the credit of Respondent 5 in that account. This order of the executing court has been affirmed by the High Court which has dismissed the appellant Bank's revision against the order of the executing court. Hence this appeal by special leave.

3. From the admitted facts, it is clear that the amount directed to be paid out of the bank account of Respondent 5 not being available therein, the consequence of the order is to direct the Bank and not Respondent 5 to make that payment. The decree being only against Respondent 5 and the Bank not being a party to it, such an order cannot be sustained. The only reason given by the courts below for making such an order is that by an earlier incorrect entry made in the bank accounts such a balance had been shown to the credit of Respondent 5 in his bank account even though that is not the correct position. Subsequently the wrong entries have been corrected on the error being detected. It is sufficient to state that a wrong entry made in the bank accounts does not confer any right on Respondent 5 to claim that amount which was not due to him. For the same reason, no direction could be issued to satisfy a decree against Respondent 5 out of an amount which did not belong to Respondent 5. The executing court as well as the High Court overlooked this obvious aspect.

4. Accordingly, the appeals are allowed. The impugned orders of the executing court and the High Court directing the appellant Bank to pay the above amount in execution of the decree in favour of Respondents 1 to 4 are set aside. Respondents 1 to 4 would be entitled to execution against Respondent 5.

5. No costs.