**Antonitto and ors. Vs. Chief Cit and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/728231

**Court** : Kerala

**Decided On :** Feb-03-2009

**Reported in** : [2009]184TAXMAN64(Ker)

**Judge** : K.M. Joseph, J.

**Appellant** : Antonitto and ors.

**Respondent** : Chief Cit and ors.

**Judgement** :

**K.M. Joseph, J.**

1. Petitioners are aggrieved by recovery proceedings initiated for realisation of tax arrears of M/s Ocean Fisheries and late K.J. Columbus for the assessment years 1974-75 to 1977-78, 1980-81 and 1982-83 with interest under Section 220(2) of the Income Tax Act. Petitioners claim to be the legal heirs of late Sri K.J. Columbus and late Smt. Kunju Mary Columbus. Exhibit P1 is the proclamation for sale of the property to be held on 6-2-2009.

2. I heard learned Counsel for the petitioners Mr. P. Balakrishnan and Mr. Jose Joseph, learned standing counsel appearing on behalf of the department.

3. It is pointed out on behalf of the petitioners that the petitioners had sought waiver of interest, which was granted under Exts. P2 and P3 to an extent of 60 per

cent of the interest. By Ext. P4 however, apparently taking note of the fact that the instalment was not paid, further proceedings were approved. According to the learned Counsel for the petitioners, the petitioners have filed Ext. P5 purporting to be under Section 119 of the Income Tax Act, 1961 claiming various reliefs including the relief of complete waiver, to reconcile the figures etc. Exhibit P6 appears to be a reminder sent by the second petitioner. Exhibit P7 is an interim order passed by a learned Single Judge of this Court in Writ Petn. (C) No. 15965 of 2008. It reads as follows:

The petitioner seeks a direction to the income-tax department to release the property attached so that the petitioner can sell off or otherwise raise funds to pay off the dues to the income-tax department. It is upto the petitioner to approach the income-tax department, who may consider the petitioners request in this regard. It is further directed that the income-tax department shall first proceed against the 31.9 cents of the attached property and shall proceed against the balance property only if the amounts recovered by sale of 31.9 cents are not sufficient to satisfy their demand.

By Ext. P1 it is not in dispute that it is the very same 31.9 cents, which have been brought to sale. According to the learned Counsel for the petitioners Mr. P. Balakrishnan this is a hard case and the amounts for which the property is put up for sale is far greater than the amount, which the petitioners are liable to pay. It is pointed out that under Exts. P2 and P3 the petitioners were granted waiver of 60 per cent interest and petitioners are even now ready to pay the reconciled amount in two or three instalments. It is further contended that as Ext. P5 petition is pending before the Central Board, it is only appropriate that the sale is deferred. It is further pointed out that the sale is being held to realise the arrears due from three others. Lastly it is contended that it is barred by limitation under Rule 68B of the Second Schedule. Learned Counsel for the petitioners referred to the decisions reported in M.U. Joshi v. TRO (2006) 281 ITR 289 (Bom) and Noorudin v. TRO : (2001) 251 ITR 357 (Mad) in this regard.

4. Per contra, learned standing counsel would point out that the petitioners should not be given any indulgence by this Court. The petitioners were given sufficient

indulgence by the authority, which they did not avail of, he contends. It is submitted that by Exts. P2 and P3 orders the petitioners were given 60 per cent waiver, but the petitioners did not comply with the terms of Exts. P2 and P3. It is also submitted that actually petitioners 2 and 3 have no locus standi as they claim under gift deeds, which were executed by the late wife of late Mr. Columbus, to whom the property was gifted by late Mr. Columbus himself. It is pointed out that the property is the joint property and the amounts are due from the persons mentioned in Ext. PI. It is submitted that if amounts are due from persons and there is liability under law, it can be enforced from the joint right in the property.

5. As far as Ext. P5 is concerned, it is pointed out that there is no basis for that petition. It is further pointed out that this Court had earlier permitted the department to proceed against the 31 cents by order dt. 4-9-2008 and what is more, Ext. P7 order was also passed, which is already adverted to and all that is being done is action in terms of the orders of this Court.

6. As far as bar under Rule 68B is concerned, it is submitted that as according to the department, it will become barred only on 2-3-2009. It is contended that the petitioners have remedy under the rules for questioning the sale if such a ground really exists.

7. I am not inclined to interfere in this matter. It is to be noted that the most important aspect is that the petitioners are parties to orders passed by this Court permitting the sale of the very same item of property by order dt 4-9-2008. Still further, by Ext. P7 dated 2-12-2008 this Court has directed the sale of this item of property apparently acceding to the request of the first petitioner. It may not be appropriate for this Court, now, on the eve of the sale, to stop the sale. Apparently, income-tax arrears relate to very early periods and it remains unrealised for quite sometime. Exhibit. P2 and P3 are passed in 2002.

8. As far as Ext. P5 is concerned, I notice that it is filed on 5-10-2008. If there was bona fide in the case of the petitioners, nothing prevented the petitioners from approaching this Court earlier and seek relief in the said regard. The approach is made to this Court in this writ petition only on 30-1-2009, which is a few days before the sale. I discountenance this approach. That apart it is not clear whether

the petitioner can be given the benefit claimed under Section 119. I do not think it appropriate, in this case, to defer the sale and direct Ext. P5 to be considered. Prima facie, I find favour with the contention of the learned Counsel for the respondents relating to the validity of the sale for the amounts due from others. Likewise, in the circumstances, I do not think that it is necessary to stall the sale on the basis of the bar of limitation. I do not see any reason why the petitioners should be given any relief in this writ petition. Accordingly, the writ petition is dismissed subject to the following observations:

The authority will consider any application in regard to the sale totally untramelled by anything contained in this judgment. I also make it clear that this judgment will not stand in the way of the third respondent taking a decision on Ext. P5 in accordance with law.