

Prabhakaran and ors. Vs. T.P.S.H. Selva Saroja and ors.

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Court : Chennai

Decided On : Apr-02-1974

Reported in : [1978]48CompCas503(Mad)

Judge : Sethuraman, J.

Acts : Income-Tax Act; [Companies Act, 1956](#) - Sections 397, 398 and 402

Appeal No. : Company Petition No. 84 of 1969 (Company Application No. 72 of 1974)

Appellant : Prabhakaran and ors.

Respondent : T.P.S.H. Selva Saroja and ors.

Disposition : Application dismissed

Judgement :

Sethuraman, J.

1. This is an application for a direction to stay all further proceedings in pursuance to the certificate issued by the Income-tax Officer, Central Circle IX, Madras-600034, under the following circumstances: Company Petition No. 84 of 1969 was filed for relief regarding management of the affairs of the company, T. P. Sokkalal Ram Salt Factory Private Ltd., and for the protection of the interest of the applicant by removing the managing director and placing the management of the company

in the hands of an administrator. The said application has already been heard and the matter is pending for judgment. On September 26, 1973, the managing director of the company in which the applicant is a shareholder wrote to him claiming a sum of Rs. 5,56,866.43 as on August 16, 1973, and wanted confirmation of the balance due from the applicant. The applicant replied on October 18, 1973, saying that he did not owe any sum to the company and repudiated the claim. The applicant is a shareholder of the said company and the managing director is his mother.

2. On January 24, 1974, the Income-tax Officer wrote a letter regarding the tax arrears in the case of T. P. Sokkalal Ramsait Factory Private Ltd., Mukkudal, in which the applicant is a shareholder. It was stated in the said letter that the applicant had to pay a sum of Rs. 3,30,103 as on August 15, 1970, and the applicant was asked to indicate the amount owed by him as on August 15, 1973, to the company. As the company was a defaulter, the applicant's properties were to be attached and a tax recovery certificate was issued to the Tax Recovery Officer, Tirunelveli. The Tax Recovery Officer, Tirunelveli, sent a notice of demand and a copy of a certificate issued under Section 226(3) of the Income-tax Act, 1961.

3. According to the applicant he had been kept away from the management of the affairs of the company and his mother, the managing director, had manipulated the account showing large sums as being due from him to the company. It is stated that there was a dispute about the amount due to the company and that the applicant had not been served with a notice of demand. It is also stated in the petition that there was search in the premises of the company in January, 1970, when large sums of unaccounted money were unearthed. It is alleged that the managing director has secreted the funds of the company and is in possession and enjoyment of the movable properties and that the applicant could not be held liable until the properties and assets in her possession were proceeded against. It is stated that there are huge liabilities of the company arising out of the mismanagement by the managing director. The prayer in the application is to stay all further proceedings in pursuance of the certificate issued by the Income-tax Officer, Central Circle IX, Madras-600034, and to appoint an interim receiver to

take charge of the accounts and management of the company.

4. To this petition, the applicant's mother and the managing director of the company has filed a counter-affidavit. It is pointed out in the counter-affidavit that Company Petition No. 84 of 1969 was filed by a person claiming to be a next friend of the applicant, who was a minor at the time of the application. On his mother's application the said next friend was removed by an order in O.S. As. Nos. 43 to 46 of 1970. By that time the applicant had attained majority and he filed an affidavit stating that the allegations of mismanagement were unfounded and that he was not desirous of prosecuting the company petition. According to her, she had stated in her counter-affidavit in the Company Petition No. 85 of 1969, as to how the applicant was indebted to the company for over Rs. 3,00,000 even in 1969. She has also stated that further payments have been made on the applicant's accounts by way of taxes, by way of a share of liability under a settlement with another branch of the family which is interested in the company and by way of advances for purchasing motor cars and lorries for him. She has also objected to the present application being filed in this court when there are other reliefs open to him to contest the demand issued by the Income-tax Officer. It is mentioned in the application that in spite of losses in the earlier years the company had improved its position and made good the loss and made a profit of over Rs. 20,00,000 for the year ending August 16, 1972. She wanted the application to be dismissed.

5. The income-tax department has also filed a counter-affidavit in which it is pointed out that the company's tax arrears and the applicant's position as a debtor of the company could not be put in issue in the proceedings in Company Petition No. 84 of 1969, which was one under sections 397 and 398 of the [Companies Act, 1956](#), relating to the management and administration of the company's affairs. It is averred that the applicant's denial of his debt was not bona fide and that he owed large sums to the company to the tune of Rs. 5,54,866 as on August 16, 1973. Another point taken in the affidavit is that the applicant could not require this court to adjudicate on the issue of his liability to the company and seek to stay the tax recovery proceedings against the company.

6. At the hearing of the application, the learned counsel for the applicant submitted that the present application arose as a result of mismanagement of the affairs of the company, and that the tax dues were mainly the result of certain transactions which went only to the benefit of the managing director. It was submitted that the provisions of Chapter VI of the [Companies Act, 1956](#), gave ample powers to pass appropriate orders restraining the department from seeking to recover the tax liabilities from the applicant. For the income-tax department, the submission was that the relevant provisions of the Companies Act could not be utilised for contesting the recovery of the tax arrears and that if the applicant had any objection about the amount claimed as due to the company, there were remedies available under the Income-tax Act itself.

7. Section 220 of the Income-tax Act provides that any amount specified as payable in a notice of demand under Section 156 had to be paid within the time limits at the place and to the person, mentioned in the notice. Sub-section (4) of Section 220 provides that if the amount is not paid within the time limited under Sub-section (1) of that section then the assessee shall be deemed to be in default. Section 222 of the Act authorises the Income-tax Officer to forward to the Tax Recovery Officer a certificate under his signature specifying the amount due from the assessee and the Tax Recovery Officer on receipt of such certificate, had to proceed to recover from the assessee the amount specified therein in accordance with the rules laid down in the Second Schedule to the Income-tax Act. Section 225 of the Income-tax Act empowers the Income-tax Officer to grant time for the payment of taxes and thereupon the Tax Recovery Officer has to stay the proceedings until the expiry of the time so granted. Section 226(3) of the Act authorises the Income-tax Officer to require by notice in writing any person from whom money is due or may become due to the assessee who was in default to pay the amount due to him either forthwith upon the money becoming due or within the time specified in the notice so much of the money as is sufficient to pay the amount due as and by way of arrears. Clause (iv) of Section 226(3) provides that every person to whom such a notice was issued was bound to comply with such notice. Where a person, to whom a notice issued under Section 226 of the Act was sent, objected to it by a statement on oath that the sum demanded or any part thereof was not due to the assessee who was in default, then nothing

contained in Section 226(3) shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it was discovered that such statement was false in any material particular the person who made the statement on oath was personally liable to the Income-tax Officer to the extent of his own liability to the assessee who was in default on the date of the notice. The Income-tax Officer has powers to amend or revoke any notice issued under that Sub-section or extend the time for making any payment in pursuance of such notice. Any person who has paid the amount in compliance with the notice issued under Section 226(3) of the Act was fully discharged from his liability to the assessee who had defaulted in payment of tax to the extent of the amount so paid to the Income-tax Officer. Under Clause (x) of Section 226, where a person to whom a notice under that section was sent, failed to make payment in pursuance thereof, he was deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings could be taken against him for the realisation of the amount as if it were an arrear of tax due from him.

8. It would be seen that Section 226(3) of the Act provides ample scope for any person from whom the amounts were due to an assessee who was in default in case he had any objection to the amount claimed from him under what may be called ' the garnishee proceedings '. The person to whom a notice has been sent under Section 226(3) of the Act has to state his objections on oath saying that the sum demanded was not due to the assessee in default. If the statement was correct, then there was no scope for recovering any money from the person concerned under the garnishee proceedings. If the statement on oath was wrong, then the result would be that the debtor to the assessee in default would himself be treated as having defaulted in payment of his own liability and the consequences contemplated by the statute would then follow. In a case like this, if the applicant had bona fide dispute regarding the payment, he could very well go before the Income-tax Officer and make the statement on oath as contemplated by Section 226(3) of the Act. There is nothing to show that he went before the Income-tax Officer. It is clear that the applicant is taking recourse to these proceedings only because he does not want the consequence of any wrong declaration on oath being visited on him. I am of the opinion that the provisions of the Companies Act cannot be so utilised as to set at naught the provisions of

another statute. As the applicant has enough remedies open to him under Section 226 of the Income-tax Act in case he had any valid and bona fide objection to paying the amount claimed from him by the Income-tax Officer, he cannot disregard the remedy provided by the statute and come before me as and by way of an application in the company petition, which is pending final orders.

9. Section 397 of the [Companies Act, 1956](#), enables an application being made by a member of a company, if the affairs of the company were being conducted in a manner oppressive to such member or members. Section 398 of the Act provides for an application being made to the court if any member of the company complains of mismanagement of the affairs of a company. The power of the court to pass orders on such application is indicated in Section 402 of the Act. Clauses (a) to (f) of the said provision do not apply here on their language. This position was not disputed. Reliance is placed on the opening words of the provision, viz., 'without prejudice to the generality of the powers of the court' and also on Clause (g) of the said provision which contemplates the court providing for any other matter in its order for which it was just and equitable that provision should be made. The Clauses (a) to (f) of Section 402 of the Act, if analysed, would show that the directions are with reference to the administration and management of the affairs of the company. It does not contemplate directions regarding debts due to third parties. If the applicant is right, then the company court would be the forum for settling disputes about ordinary debts which would ordinarily have to be done in civil suits on payment of appropriate court fees. This is not the object of the provision. Clause (g) of the said provision is only a residuary one and has to be construed in the light of the object with which Section 402 has been enacted, viz., to give directions regarding the internal management of the company. Section 402 of the Act, cannot, in my opinion, be utilised for the purpose of agitating the disputes about liabilities or for staying the tax liability of the company. If there are any objections to the tax as levied, then such an objection has to be got raised by recourse to the provisions of the Income-tax Act. Sections 397 and 398 of the Companies Act are for relieving the shareholder against the oppression or mismanagement of the affairs of the company. The liability to tax levied on the company is outside the scope of these provisions. Section 402 of the Act cannot, therefore, be invoked or applied in such a case.

10. The application is dismissed with costs.

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