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Sunny Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/849037

Court : Kerala

Decided On : Nov-05-2009

Reported in : 2010(1)KLT365

Judge : C.N. Ramachandran Nair and; V.K. Mohanan, JJ.

Acts : Motor Vehicle Act; ;Kerala General Sales Tax Act, 1963 - Section 53; ;Code of Civil Procedure (CPC) , 1908 - Order 33 - Order 44

Appeal No. : W.A. Nos. 2261 and 2381 of 2009

Appellant : Sunny

Respondent : State of Kerala

Advocate for Def. : Mohammed Rafiq, Government Pleader

Advocate for Pet/Ap. : K.M. Varghese, Adv.

Disposition : Appeal dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. Writ Appeals are filed against the judgment of the learned single Judge holding that Sales Tax Appellate Tribunal has no powers to entertain the claim of the appellant that he is an indigent person eligible to file appeal under Order XLIV of

C.P.C. without payment of court fee. We have heard counsel appearing for the appellants and Government Pleader appearing for the respondents.

2. Counsel for the appellants has relied on the decision of the Supreme Court in State of Haryana v. Smt. Darshana Devi : 1979 KLT 269 (SC) : AIR 1979 SC 855 and contended that Order XXXIII as well as Order XLIV giving powers to civil court to permit filing of suits and appeals by parties as indigent persons without payment of court fee, apply to Sales Tax Appellate Tribunal. On going through the judgment above referred, we find that it is rendered in the context of a claim petition filed under the M.V. Act before the M.A.C.T. without payment of court fee. Supreme Court held that since M.A.C.T. has the trapping of a civil court, it has all the power under Order XXXIII contained in the C.P.C., However, we do not think the decision applies here because determination of compensation under the M.V. Act by MACT is almost in the same manner civil court decides civil suits. In fact civil judges are notified as MACTs. and the purpose of constitution of the Tribunal is for early disposal of cases. In fact, prior to constitution of MACTs, suits for damages under the MV Act were decided in civil suits by civil courts. However, so far as Sales Tax Act is concerned, it is a statute providing for levy and collection of tax and the powers of the authorities are found in the statute itself. Section 53 gives only limited powers to the appellate authority, revisional authority and the Tribunal. For easy reference we extract hereunder the said Section:

Section 53. Power to summon witnesses and cause production of documents.-An assessing authority or an appellate or revising authority (including the appellate Tribunal) shall, for the purposes of this Act, have all the powers conferred on a Court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely,:

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and,

(b) compelling the production of any document.

It is clear from the above provisions that the powers of the civil court to be exercised by authorities under the statute pertain only to summoning and enforcing the attendance of any person and examining him on oath or affirmation and for compelling production of documents. Since the statutory authorities under the K.G.S.T. Act are not conferred with any powers of civil court contained in Order XXXIII and Order XLIV of the C.P.C., none of the statutory authorities including the Tribunal has the authority to dispense with payment of court fee.

We therefore confirm the judgment of the learned single Judge and dismiss the appeals.

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