
Waryam Singh and Others Vs Income Tax Officer and Others

Civil Writ Petition No. 452 of 1996

Court: High Court of Himachal Pradesh

Date of Decision: Oct. 14, 1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 60#Constitution of India, 1950 â€” Article 226#Himachal Pradesh Debt Reduction Act, 1976 â€” Section 21#Income Tax Act, 1961 â€” Section 220

Citation: (2000) 243 ITR 665 : (2000) 1 ShimLC 365

Hon'ble Judges: D. Raju, C.J; Lokeshwar Singh Panta, J

Bench: Division Bench

Advocate: Vinay Kuthiala, for the Appellant; Indar Singh, for the Respondent

Judgement

D. Raju, C.J.

The above writ petition has been filed by the wife, the second petitioner, and two sons of the late Shri Sukhdev Singh, who

was said to have died on March 15, 1989. During his life time, the deceased, Sukhdev Singh, was said to have been running a business by forming

an ""association of persons"" bearing the name ""Kangra Iron and Steels Syndicate"", Kangra, in the year 1950. Concedingly, he had a flourishing

business for some time but after about ten years the business came to a stand-still and was ruined, compelling, according to the petitioner, the

deceased to sell almost all his assets to clear liabilities and debts in addition to mortgaging the house before his death. So far as the issues raised in

the case on hand are concerned, the determination of which do not require the other details except noticing the fact that on account of the business

activities carried on by the late Sukhdev Singh when he was alive, he incurred liabilities under the Income Tax Act, 1961, in respect of the

assessment year 1960-61 to the tune of Rs. 12,868 and in respect of the assessment year 1961-62 to the tune of Rs. 26,494 as disclosed in

annexures PA and PB filed with the writ petition. The wife, the second petitioner herein, was also said to be one of the members of the association

of persons, which carried on the business though, it is now claimed in the affidavit filed by the first petitioner, her son, that she had no knowledge

and was ignorant about any of the business activities, she being illiterate. Efforts appear to have been taken at various points of time for enforcing

the recovery of outstanding dues with interest and penalty recoverable thereon on account of the delay and it did not yield fruitful results. Reference

is made by the petitioners in this petition about some enquiries at some point of time by the officers and recommendations which were said to have

been made to issue non-recovery certificate but that was not done so and, therefore, the recovery proceedings were kept alive and pursued

apparently on account of the fact that the deceased has left behind him house property, which is said to be a residential house and which is claimed

to be also subject to a mortgage. The defaulted amount with accumulated interest and penalty has got multiplied to the tune of Rs. 1,48,509. In

1995, when notices were issued, the first petitioner as also the second petitioner did not properly respond and even when a notice was issued on

December 20, 1995, to call upon the petitioner to show cause as to why a warrant of arrest be not issued, as in respect of earlier letters the

response was, refusal to receive, which necessitated the issue of a warrant of arrest dated January 31, 1996, to enforce the personal attendance

and presence of the first petitioner, who, it is now claimed, was constrained under pressure to give a statement agreeing to clear the arrears by

March 15, 1996. Though the petitioner would claim that the petition u/s 220(2) of the Income Tax Act, 1961, has been filed before the

Commissioner of Income Tax, Patiala, admittedly, it was allowed to be dismissed for non-appearance and non-prosecution. It is in such

circumstances, the petitioners have filed the present writ petition seeking for the following reliefs :

(i) The respondents be restrained from recovering the Income Tax arrears for the years 1960-61 and 1961-62 from the petitioners and the same

may kindly be waived.

(ii) The respondents be directed not to arrest or harass the petitioners in any manner.

(hi) The records of the case may be summoned.

(iv) The respondents be directed not to proceed against the residential house of the petitioners for recovery of the arrears.

2. Before even advertng to the contentions of the parties on either side, it would require our observations to be made even on the tenability of the

nature of the prayer sought for within the scope of this writ petition. This court is not concerned and cannot deal with the question of any waiver

because that is the jurisdiction of the authorities functioning under the Act and unless they move those authorities, there is no scope for their coining

to this court with any such reliefs. The next relief sought for is a direction not to arrest or harass the petitioners, in any manner. It would be

considered hereinafter whether they are liable to be arrested and if they are liable to be and such arrest would be in accordance with law, it is futile

for anyone including the petitioners to claim any harassment. The respondents in their reply, would submit that the object was not to arrest the

petitioners and it was not given out that they will be arrested. As indicated earlier, since they were avoiding facing even the enquiries and disclosing

the particulars sought, the arrest warrant appears to have been issued, which has become, in our view, mainly essential on account of the behaviour

and attitude of the petitioners themselves exhibiting"" a defiant and indifferent attitude to the notices issued. As to the question of arrest, Rule 81

contained in Schedule II to the Act prohibits the arrest and detention of a woman. Consequently, the question of arrest of the second petitioner

would not arise. So far as the other petitioners are concerned, Rule 85 of the very Schedule would indicate that if at any time after the certificate is

drawn up by the Tax Recovery Officer the defaulter dies, the proceedings under the Schedule can be pursued as if the legal representatives were

the defaulters except in respect of arrest and detention. So far as the other reliefs sought for in the nature of a direction not to proceed against the

residential house of the petitioners for recovery of the arrears are concerned, the legality and propriety of the same has to be and is being

considered, hereinafter.

3. Vinay Kuthiala, learned counsel for the petitioners, while elaborating the contentions raised in the petition has confined his submissions only to

the immunity of the petitioners and the property of the original defaulter-assessee, the late Sukhdev Singh, namely, the house, which admittedly is in

the hands of the petitioners by relying upon the provisions contained in Rule 10 read with Section 21 of the Himachal Pradesh Debt Reduction Act,

1976 (Act No. 31 of 1976), by which Clause (ccc) was ordered to be inserted in Section 60 of the Code of Civil Procedure, 1908. Rule 10 in the

Second Schedule to the Act stipulates that all such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment

and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule. Consequently, the question that

arises and has been urged also before us is as to whether the house property in question, admittedly belonging to the defaulter, which is in the

hands of the petitioners, is one which can be said to be exempt from attachment and sale in execution of a decree of a civil court. For this purpose,

as indicated earlier, the provision ordered to be inserted by virtue of Section 21 of the Himachal Pradesh Debt Reduction Act is strongly relied

upon and which reads as follows :

21. Amendment of Section 60 of the Code of Civil Procedure, 1908.-- In Section 60 of the Code of Civil Procedure, 1908 (5 of 1908),--

(a) in Sub-section (1) in the proviso,-- . . .

(ccc) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant

thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him :

Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.

4. Per contra, Indar Singh, learned standing counsel for the Income Tax Department, while pursuing the stand taken in the replies filed contended

that the provisions contained in the Himachal Pradesh Debt Reduction Act, 1976, including Section 21, which provides for insertion of Clause

(ccc) in the proviso to Sub-section (1) of Section 60 of the CPC will have no application, whatsoever, to recovery proceedings under the Income

Tax Act, 1961, and that the said provisions have limited role and application only in respect of proceedings initiated under the Himachal Pradesh

Debt Reduction Act, 1976, and not even to all or any proceedings initiated before the civil court and the CPC applicable as such to those

proceedings before the civil court, arising in matters other than the one falling within the purview of the Himachal Pradesh Debt Reduction Act,

1976.

5. Even learned counsel for the petitioners apparently anticipating the stand that may be taken for the respondents invited our attention to the

decision reported in Himachal Lithographers v. Punjab and Sind Bank [1999] 1 Sim. L.C. 117 , rendered by a Division Bench of this court,

wherein the applicability of the amendment introduced by the Himachal Pradesh Debt Reduction Act, 1976, came to be considered in respect of a

suit filed by the Punjab and Sind Bank against the defaulter, who had borrowed loan from the said bank. The Division Bench has considered even

the decision of the apex court in Kiran Bala Vs. Surinder Kumar, strongly relied upon before us also by learned counsel for the petitioners in

support of his stand, as noticed above, to claim exemption of the property in question from the recovery proceedings under the Act, and held that

the said decision will have no application to the type of cases on hand considered by the learned judges of the Division Bench. In paragraph 12 of

the judgment of the Division Bench, it has been specifically held that Clause (ccc) to Sub-section (1) of Section 60 of the Code of Civil Procedure,

as inserted by Section 21 of the Himachal Pradesh Debt Reduction Act would apply only to the execution of the decrees to which the Act applies

and it has no general application. It is this specific conclusion arrived at by the Division Bench, which is virtually put into controversy and contest by

learned counsel for the petitioners. In order to substantiate his contentions, learned counsel for the petitioners endeavoured much and even at

length to impress upon us by submitting that the judgment of the Division Bench did not properly consider the ratio of the Supreme Court decision,

reported in Kiran Bala Vs. Surinder Kumar, and that the amendment introduced by the Himachal Pradesh Debt Reduction Act being similar and

identical to the one, which prevailed in Punjab and which came to be considered by the Supreme Court, the ratio must be applied and that the

judgment of the Division Bench will not govern this case before us. It was also further contended before us for the petitioners that the provisions of

Section 21 had the effect of incorporating in the Code of Civil Procedure, Clause (ccc) and, therefore, it applied by virtue of the provisions

contained in the Second Schedule to the Income Tax Act, itself, very much to the present case, and, therefore, the property is exempt. To support

his claim about the applicability of the principle of legislation by incorporation as also the manner in which a proviso has to be construed and the

question as to the inconsistency or otherwise of two amendments, one effected by the State Legislature and another by Parliament, several

decisions have been brought to our notice. We are of the view that they are not only irrelevant but besides the point that is really in issue before us

and, therefore, we refrain from making any reference to the same. In our view, the only relevant decisions are the one reported in Himachal

Lithographers v. Punjab and Sind Bank [1999] 1 Sim. L. C. 117 and Kiran Bala Vs. Surinder Kumar, Since the petitioners have not staked claims

based on Clause (ccc) to Sub-section (1) of Section 60 of the Code of Civil Procedure, even the decision brought to our notice and reported in

State Bank of India v. Balak Raj Abrol [1992] 2 Sim. L. C. 172, has no relevance.

6. We have carefully considered the submissions of learned counsel appearing on either side in the light of the abovereferred two decisions and the

relevant provisions of law. The decision reported in Himachal Lithographers v. Punjab and Sind Bank [1999] 1 Sim. L. C. 117 , has been taken

on appeal by the petitioners, who have lost in this court, by filing a petition for Special Leave to Appeal (Civil) No. 14581 of 1998 and though

initially notice appears to have been ordered and interim orders of stay have also been granted, ultimately on November 9, 1998, their Lordships

of the apex court dismissed the SLP and vacated the interim orders also. We are conscious of the fact that though on that account alone the

decision of the Division Bench cannot be elevated to the status of the judgment of the Supreme Court, the seal of approval affixed by rejecting

SLP could, in our view, at least constitute a seal of approval of the Division Bench judgment to the extent that it has become final so far as this

court is concerned. Therefore, in our view, it is not permissible for the petitioners to resurrect the points urged before and rejected by the Division

Bench in the earlier decision once over again before us. We are in entire agreement with the reasoning of the learned judges of the Division Bench

and the contentions to the contra placing reliance once again upon the decision reported in Kiran Bala Vs. Surinder Kumar, which as had earlier

been indicated was also considered by the Division Bench as an attempt and an exercise only in futility.

7. We are also of the further view that it is not permissible to consider the amendment introduced by virtue of Section 21 of the Himachal Pradesh

Debt Reduction Act, 1976, as if the said amendment was an amendment to the CPC in its general application in the State. If that be the position

the amendment would have been an amendment to the CPC as a State amendment. That is not what has been done in this case. The matter would

be made clear if reference is made to some of the salient features of the Act and the provisions of the Himachal Pradesh Debt Reduction Act,

1976. The said Act by the very name of it could be seen to be an Act to provide for the reduction of debt in the State of Himachal Pradesh. The

debt though not specifically defined must be of a debtor, vis-a-vis, a creditor and the definition of debtor as contained in Section 2(xiv) means a

person who received a loan as defined under the said Act. The Act provides its own special provisions as to the regulation of the debt, mode of

recovery of debt and the manner in which the reduction of the debt is envisaged and, therefore, it purports to amend the law relating to the

Provincial Insolvency Act and the Code of Civil Procedure, etc. Consequently, it could be seen that the very object of these amendments is not

meant to be by way of general amendments to either the Provincial Insolvency Act or to the CPC generally in the State of Himachal Pradesh but to

the applicability of those laws to matters or proceedings arising and dealt with under the Himachal Pradesh Debt Reduction Act, 1976. Chapter III

under the caption ""Suits and decrees"", provides for forum of suits, debtor's right to sue, amendment of decree, accounting"" and determination of

the amounts due and rate of interest and decrees, etc., and Chapter IV under the caption ""Execution of decrees"", likewise provides for the

restriction on attachment of agricultural produce, protection of agricultural land of debtor from sale or transfer, procedure to be followed where

several decrees are executed simultaneously, trees protected from sale, etc. Section 14 reads that the provisions of the Code of Civil Procedure,

1908, save in so far as they are not inconsistent with the provisions of this Act, shall apply to all proceedings under the Act, thereby while making

the CPC as such applicable to the proceedings under the Debt Reduction Act, the State Legislature thought fit to indicate certain additional

protections, in addition to those already contained. Instead of enacting"" its own provisions in the Himachal Pradesh Debt Reduction Act, 1976, the

State Legislature adopts those provided in that by a process of reference and incorporation, and thereby adopts the Code to be applied to

proceedings under the Debt Reduction Act. The amendment envisaged in Section 21 is of the Code of Civil Procedure, as adopted are to be

applied by virtue of Section 14 of the Debt Reduction Act, in its applicability to proceedings under the Debt Reduction Act and not to the CPC in

its general application in the State, in respect of all other matters falling outside the Debt Reduction Act. Consequently, the amendment to Section

60 of the Code of Civil Procedure, 1908, contained in the Himachal Pradesh Debt Reduction Act, 1976, must be construed in the context of

Section 14 of the Act adopting and applying the provisions of the CPC only to all proceedings under the Debt Reduction Act. Hence, it is

inevitable that the operation of Section 21 including Clause (ccc) inserted in the CPC must be read as though it is only for the limited purpose of

proceedings arising under the Himachal Pradesh Debt Reduction Act, 1976, and not to the Code of Civil Procedure, 1908, as applicable to the

State of Himachal Pradesh in respect of proceedings other than those contemplated and arising under the Himachal Pradesh Debt Reduction Act,

1976. This view taken by the earlier Division Bench does not suffer any infirmity so as to warrant even any rethinking on this question, by ourselves

or by a larger Bench of this court. Consequently, we see no merit whatsoever in the submissions of learned counsel for the petitioners and the

objections to the recovery proceedings, therefore, cannot be sustained. The writ petition is, accordingly, dismissed.

8. However, we make it clear that the house property which has been left behind by the defaulter, the late Sukhdev Singh is liable and cannot be

said to be exempt, even in the hands of the petitioners from being proceeded against for the recovery of the dues in accordance with the provisions

contained in the Income Tax Act and Schedule II to the Act. No costs.

9. The interim order of stay, if any, shall stand vacated.