

(1984) 08 CAL CK 0003**Calcutta High Court****Case No:** Suit No. 834 of 1978

S.S. Miranda Ltd.

APPELLANT

Vs

Shyam Bahadur Singh

RESPONDENT

Date of Decision: Aug. 9, 1984**Citation:** (1985) 21 TAXMAN 432**Hon'ble Judges:** Suhas Chandra Sen, J; Dipak Kumar Sen, J**Bench:** Division Bench**Advocate:** Utpal Bose, for the Appellant; Dipak Kumar Bose, for the Respondent**Judgement**

Suhas Chandra Sen, J.

This appeal is treated as on day's list at the instance of the parties and the application and the appeal are disposed of by the following order. The appellant was directed to pay a sum of Rs. 31,023.54 with interest thereon at the rate of 9 percent per annum from 22-11-1978 up to 5-3-1981 by a decree dated 5-3-1981 and thereafter interest on the said sum at 6 percent per annum until realisation and also to pay to the plaintiff the cost of the suit including the reserved cost. There was a direction for the taxation of the cost.

2. It appears that the appellant chose to pay amount after deduction of income tax at source. The amount of tax deducted at source was paid in Bombay to the credit of the respondent.

3. The case of the respondent is that the respondent was entitled to get payment under the decree and there was no scope for deduction of income tax from the amount that was directed to be paid. Reliance was placed for this proposition on the case of All India Reporter Ltd., Nagpur Vs. Ramachandra Dhondo Datar, wherein it was held that where an employee obtains a decree for arrears of salary, compensation for wrongful termination of service and salary due for the period of notice and also interest and costs, there was no scope for applying the provision for deduction of income tax at source. The amount was payable as "judgment-debt"

and not as "salary" and the judgment-debtor could not claim to deduct income tax payable as salary. In view of that well settled principle, the respondent is entitled to succeed in this appeal and the appeal must fail.

4. Under the circumstances, this appeal is disposed of as follows:

If the appellant pays a sum of Rs. 16,986.24 to the respondent and the costs of this appeal and the application assessed at 60 gms. Within a fortnight from date, the operation of the order of execution of the decree will be stayed. If the petitioner-appellant fails to furnish the security within a fortnight from date, the appeal will stand dismissed and this order will stand vacated. There will, however, be an unconditional stay for a fortnight. It is also made clear that the security of Rs. 48,000 that has been furnished by the appellant can be withdrawn by the appellant only upon payment of this amount of Rs. 16,986.24 and the cost of 60 gms. to the respondent. Upon payment of the aforesaid dues, the appellant will be entitled to realise the amount of security that has been furnished.

5. The appellant has contended that the appellant has already paid the amount of tax deducted at source to the credit of the respondent in Bombay. We make it clear that the appellant will be at liberty to take steps for recovery of this amount from the income tax authority in accordance with law and the respondent is directed to co-operate with the appellant for the recovery of this amount and, if necessary, to sign documents for the aforesaid purpose. All parties to act on a signed copy of the minutes.

Dipak Kumar Sen, J.

I agree.