

(1999) 07 CAL CK 0005

Calcutta High Court

Case No: Writ Petition No. 1507 of 1999 12 July 1999

SUSHIL KUMAR and CO.

APPELLANT

Vs

JOINT COMMISSIONER OF
INCOME TAX

RESPONDENT

Date of Decision: July 12, 1999

Citation: (2001) 246 ITR 293 : (2001) 114 TAXMAN 705

Hon'ble Judges: Ajoy Nath Ray, J

Bench: Division Bench

Advocate: Dr. D. P. Pal, for the petitioner, for the Appellant;

Judgement

Ajoy Nath Ray, J.

The respondents are not called upon in this application. Dr. Pal submits and relies in regard to such submission on paragraph 22 of the petition, that the writ petitioner was willing to furnish a bank guarantee for the disputed amount of about Rs. 8 lakh ; none the less an attachment order has been passed u/s 281B and consequentially section 230A clearance has been refused.

2. Nothing is there in the correspondence to show that any offer of bank guarantee was made to the department. It has been made for the first time to the writ court. Section 281B order records that no arrangement by way of bank guarantee was made. There is no impeachment of that sentence in the writ petition as being incorrect or mala fide.

3. Furthermore, if in regard to the outstandings of the two assessment years appeals are possible, and stay pending such appeal can also be applied for in the department, I do not see why the writ court should be approached.

4. It is most improper that when the department claims for bank guarantee it will not be given and then the party will come to court and offer a bank guarantee for obtaining an interim order from the writ court.

5. This is an abuse of the process of law, which permits issuance of high prerogative writs in extraordinary circumstances when there is no adequate alternative remedy left to the person, who has all along acted in a bona fide and clean manner.
6. The writ petitioner does not satisfy this test.

The application is summarily rejected with costs assessed at Rs. 10,500.

All parties are to act on a signed xerox copy of this order on the usual undertaking.