

(1968) 02 CAL CK 0017

Calcutta High Court

Case No: A.F.O.O. No. 506 of 1963

Khardah Co. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Feb. 19, 1968

Acts Referred:

- Bengal Public Demands Recovery Act, 1913 - Section 16

Citation: AIR 1969 Cal 284 : 72 CWN 683 : (1968) 2 ILR (Cal) 227 : (1968) 2 ILR (Cal) 162

Hon'ble Judges: D.N. Sinha, C.J; A.K. Mukherjea, J

Bench: Division Bench

Advocate: A.C. Bhabhra and Padmabindu Chatterjee, for the Appellant; Sushil Kumar Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Sinha, C.J.

The appellant, Messrs. Khardah Co., Ltd., (hereinafter referred to as "the company") is a dealer, inter alia, in jute and jute goods. During April, 1948 and March, 1949, the Company sold gunnies worth over Rs. 10/- lacs to the Government of India, It claimed that the transaction was exempted from sales-tax under the provisions of Section 5 (2) (iii) of the Bengal Finance (Sales Tax) Act. 1941. The Assistant Commercial Tax Officer overruled the contention and assessed the transaction to sales-tax amounting to Rs. 47,802-8-3. Against the assessment, the Company went up in appeal before the Commissioner of Commercial Taxes. The appeal was dismissed on 22nd March, 1951. Thereupon, certificate proceedings were started under the Bengal Public Demands Recovery Act, being Certificate Case No. 80 S.T.B. of 1951-52, and notice u/s 7 of the Act was served. Actually no objection was filed u/s 9 but sometime in July, 1951 the Board of Revenue stayed the matter because there was another matter which was pending before the Supreme Court in which the same point had arisen, namely, as to whether such transactions were exempted from the payment of sales-tax. It appears that this was done at the instance of the

company. In fact, the Company at various times had asked for stay of proceedings. The Supreme Court ultimately held that such sale transactions are not exempted from sales tax u/s 5 (2) (iii) of the Bengal Finance (Sales Tax) Act, 1941. Thereupon, the appellant was called upon to pay the amount. On 23-10-1956, the appellant paid the said amount of Rs. 47,802-8-3 by cheque but nothing was paid towards interest, charges and costs. On the very same day, the Certificate Officer made the following order:

"Treasury challan for full sales tax received. Ask C. D. to pay up cost and interest (after calculation) and put up on 23-1-57".

I have called for and looked into the original order-sheet and it appears that thereafter on numerous occasions the appellant was called upon to pay the interest and costs but it never made any payment. At first it made objection as to the form of the notice and then went up to the Board of Revenue and so forth and this explains the very great delay that has occurred in the realisation of the same. Finally, all these objections having been ruled out, the appellant made an application to this Court on August 18, 1960 and on 24th August, 1960, a Rule was issued calling upon the opposite parties to show cause why they should not be prohibited from realising the amounts of interest and costs or from taking any proceeding in respect thereof. This is the application which came up before Mr. Justice Banerjee, who dismissed the application and discharged the rule by an order dated 6th December, 1962. It is against this order that the appeal has been directed.

2. There is only one point that is urged before us and that is as follows: There is no dispute that the original certificate amount that is mentioned in the certificate was Rs. 47,302-8-3. In the certificate there was no mention of interest or cost. The usual notice u/s 7 was issued but there the matter stood because of the various stay orders. Interest and costs are provided for u/s 16 of the Public Demands Recovery Act (hereinafter referred to as "the said Act"). The provisions thereof are set out below:

"16. There shall be recoverable, in the proceedings in execution of every certificate filed under this Act -

(a) interest upon the public demand to which the certificate relates, at the rate of six and a quarter per centum per annum from the date of the signing of the certificate up to the date of realisation.

(b) such costs as are directed to be paid u/s 45, and

(c) all charges incurred in respect of-

(i) the service of notice u/s 7, and of warrants and other processes, and

(ii) all other proceedings taken for realising the demand."

Mr. Bhabhra's argument is that, when the certificate amount, as shown in the original certificate, was paid amicably, there v/as no execution proceeding pending and, therefore, no amount for interest, costs and charges is at all payable. Apropos this argument, we may divide it into two parts. Firstly as to whether the amount for interest, costs and charges is at all payable or recoverable in the facts and circumstances of the case. This is a substantive question and the second one is merely a technical question, namely, as to whether there is at the present moment, any execution proceedings pending, in which it can be made recoverable. Mr. Bhabhra has made it clear that if he fails in the first point, then he will not take the second point, because that would be merely postponing the evil day. I think, this is a very fair attitude. The question, therefore, is, as to whether interest, costs and charges are at all payable. Execution of certificates is dealt with in Part III of the said Act. Section 11 deals with the person who may execute a certificate. Section 13 lays down that no step in execution of a certificate can be taken until the period of thirty days has elapsed from the date of the service of the notice required u/s 7 or, when a petition is duly filed u/s 9, until such petition is heard and determined. Section 14 lays down that no step in execution of a certificate shall be taken until thirty days has elapsed since the date of the service of the notice required by Sections 7 and 11, or, when a petition has been duly filed u/s 9, until such petition has been heard and determined. Section 14 is very important and lays down the modes of execution. Several modes are laid down, namely, attachment and sale, sale without previous attachment, arrest of the judgment-debtor and detention in civil prison or by attachment of decree. Inevitably, we have to come back to Section 16 because that is the most important Section that creates the liability to pay interest, costs and charges. Mr. Bhabhra interprets it to mean that the liability to pay interest, costs and charges is subject to the existence of execution proceedings. In other words, if the principal sum due on a certificate is paid at a time when no execution proceeding is actually pending, the liability to pay interest, costs and charges does not accrue. In my opinion, this is not a correct interpretation of Section 16. u/s 16, interest, costs and charges are payable with regard to the public demand to which the certificate relates, but it is stated that it is recoverable by execution proceedings. This only lays down the mode of recovery. Therefore, simply because at the time that the money is paid amicably no execution proceeding was pending, does not avoid the liability. Putting it in another way. amicable payment of the principal sum alone cannot avoid the liability of the payment of interest, costs and charges, payable under the said Act. Mr. Bhabhra has with great fairness referred us to a decision of the Supreme Court which seems to be very apposite, namely. [R.B.H.M. Jute Mills, Katihar and Others Vs. Certificate Officer, Katihar and Others](#), . This was a case under the Bihar and Orissa Public Demands Recovery Act. 1914. It was expressly held there that the certificate debtor cannot escape liability to pay the accrued interest by paying the principal amount of the certificate. In that case, however, execution proceedings had been taken out, but the decision did not turn upon that question alone, but also upon the liability to pay interest. Putting it in another way, Mr. Bhabhra argued that

a certificate, if it does not itself speak of any interest payable, can be paid up even after a considerable time since it was issued, and the certificate debtor can wait for a convenient movement to pay it up before execution proceedings are actually initiated, and in such a case, no interest or cost would be payable. In my opinion, that is not the law. The law is that all certificate amounts will carry interest costs and charges but they would be recoverable only when execution proceedings are initiated. Therefore, amicable payment at any time, only of the principal amount will not bring the certificate to an end. The certificate must be considered to be a certificate for the original amount mentioned in it as well as the amount payable in law, namely, interest, costs and charges. To escape liability under the certificate altogether, the whole amount will have to be paid or deposited. In the present case, no amount was paid towards interest, costs and charges and as such the application has rightly failed.

3. The result is that, although our reasoning is not identical with the Court below, the conclusion is the same. The appeal is consequently dismissed. There will be no order as to costs.

Arun K. Mukherjea, J.

4. I agree.