

Before : A. L. Bahri, J.

THE STATE OF PUNJAB AND ANOTHER,—*Petitioners.*

versus

AMOLAK RAM KAPOOR AND OTHERS,—*Respondents.*

Civil Revision No. 1730 of 1988.

27th July, 1990

Punjab General Sales Tax Act (46 of 1948)—S. 19—Punjab Land Revenue Act, 1887—S. 158—Code of Civil Procedure, 1908—O. 39, Rls. 1 & 2—Hosiery Industry Welfare Board registered under Societies Registration Act—Sales-tax assessment framed against the Board—Recovery proceedings initiated against members—Members approaching Civil Court for grant of injunction—Liability of members to pay tax—Such tax.

Held, that the Board was a Society registered under the Societies Act as per rules and regulations could acquire and sell property, the recovery of arrears of sales tax imposed on the Board could only be recovered from the property of the Board and not from the members of the Board. That being the position there was *prima facie* case established by the plaintiffs in filing the suit and a reasonable ground appeared for the grant of interim injunction.

(Para 7)

Held, that if the recovery was to be effected from the property of the Board, obviously there was no question of granting any injunction. Since the arrears are being recovered from persons who were *prima facie* not liable to pay the same the lower Appellate Court rightly exercised discretion in the grant of injunction.

(Para 8)

Commissioner of Income-tax, Delhi v. Bansri Dhar and Sons A.I.R. 1986 Supreme Court 421.

(DISTINGUISHED)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri T. S. Cheema, District Judge, Ludhiana dated 22nd February, 1988 reversing that of Shri S. K. Sharma, S.J.I.C. Ludhiana dated 18th July, 1987 allowing the appeal and setting aside the impugned order with no order as to costs and the application of the appellants under order 39 rules 1 and 2 C.P.C. is allowed and restraining the defendants from recovering the amount of tax assailed

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in the suit from the plaintiffs during the pendency of the suit and directing the parties to appear in the trial court on 27th February, 1988.

Claim : Suit for permanent injunction restraining the defendants from realising the alleged Sales Tax arrears for the years 1973-74 to 1975-76 of M/s Hosiery Industry Welfare Board, Phalahi Bazar, Ludhiana amounting to Rs. 81,687-42 from the plaintiffs as arrears of land revenue under the Punjab Land Revenue Act.

Claim in Revision : For reversal of the order of lower appellate court.

Anil Malhotra, Advocate, for the Petitioner.

C. M. Chopra, Advocate, for Respondent No. 1.

JUDGMENT

A. L. Bahri, J.

(1) The Assessing Authority under the Punjab General Sales Tax Act framed assessment of sales tax against M/s Hosiery Industry Welfare Board, Ludhiana, a Society registered under the Societies Registration Act for the years 1973-74 to 1975-76. The said Board having become defunct the recovery of arrears of sales tax was sought to be effected from Amolak Ram Kapoor, Ex-President of the said Board.

(2) The arrears of sales tax were being recovered as arrears of land revenue under the provisions of the Punjab Land Revenue Act. The suit was filed by Amolak Ram Kapoor and M/s Kapoor Hosiery and Textiles, Panipat, for the grant of permanent injunction restraining the State of Punjab, Excise and Taxation Officer and the Tehsildar-cum-Assistant Collector II Grade, Panipat from realising the alleged sales tax arrears of the aforesaid Board from the plaintiffs alleging that they were not liable to pay the arrears of sales tax which were due from the aforesaid Board in their individual capacity. Along with the suit an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for the grant of *ad interim* injunction during pendency of the suit was filed. The arrears amounted to Rs. 81, 687.42 P. which were sought to be recovered.

(3) Sub Judge I Class, Ludhiana,—*vide* his order dated July 18, 1987, rejected the application for the grant of *ad interim* injunction.

On appeal, the aforesaid order was set aside by the District Judge and *ad interim* injunction was granted as prayed during pendency of the suit. Hence this revision petition by the defendant State of Punjab and others.

(4) Shri Anil Malhotra, Advocate appearing on behalf of the petitioners, has argued that the present suit was barred under the provisions of Punjab Sales Tax Act as well as the Punjab Land Revenue Act and thus their being *no prima facie* case in favour of the plaintiffs *ad interim* injunction ought not have been granted.

(5) After hearing counsel for the parties, I find no force in this petition. A copy of the certificate issued by the Registrar of Firms has been shown indicating that Hosiery Industry Welfare Board, Registered, Ludhiana, was registered under the Societies Registration Act on April 22, 1966. It is not disputed that orders of assessment against the said Board were passed, the validity of such orders is not being challenged by the plaintiffs. It is only liability of the plaintiffs which is being challenged, as the orders of assessment were not passed against them. It is not disputed that the Board was covered by the definition of 'dealer' as defined under section 2(d) of the Punjab General Sales Tax Act. Explanation (1) added to Section 2(d) of this Act makes it abundantly clear that a Co-operative or a club or any association which sells or supplies goods to its members would be a dealer within the meaning of the said clause. Section 19 of this Act provides that no assessment and no order passed under this Act or the rules made thereunder shall be called into question in any Civil Court. Reliance has been placed by learned counsel for the petitioner on this provision to support his argument that the present suit was not maintainable. Further reliance has been placed on section 158 of the Punjab Land Revenue Act which also bars institution of suits challenging orders passed relating to recovery of arrears of land revenue. On going through these provisions, I find that the suit of the present nature will not be covered by the aforesaid provisions. Neither the quantum of sales tax fixed nor the order of assessment passed against the Board under the provisions of the Punjab General Sales Tax Act is being questioned in this suit. The only question on which the suit has been filed is the personal liability of the plaintiffs for payment of the arrears of sales tax, which were in fact due from the aforesaid Board.

(6) The Hosiery Industry Welfare Board was merely an association of persons who formed such society and got it registered under

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the Societies Registration Act. There is no provision under this Act for burdening members of such an association which has been registered under the Act for the liabilities of the Board. Otherwise, the Board having been registered under the Societies Registration Act, could on its own sue or be sued. The said Board was capable of owning property as per memorandum of association of the aforesaid Board, copy of which has been produced. One of the aims and objects of the Board was to purchase or otherwise acquire movable or immovable properties. The rules and regulations of the aforesaid Board, copy of which has also been produced, indicated in Rule 6 that members of the said Board were only required to pay subscription of Rs. 6. Rule 26 of these Rules further provided duties of the Executive Committee of the Board and one of the duties was to collect money according to the necessity in addition to the subscription from the members and others and to spend the funds. Rule 34 further provided the consequences of dissolution of the Board that after satisfying of debts and liability, if any, whatever property of the Board remained, the same was not to be distributed among the members of the association but were to be given to some other society or institution having the object similar to that of the Board. Thus, their being no provision either under the Societies Registration Act or under the Rules and Regulations or memorandum of association of the Board, fixing any liability on its members with respect to any amounts due from the Board to others, recovery of sales tax thus could not be effected personally from the members even though some of them happened to be Ex-office-holders of the Board. Such a matter was under consideration of the Kerala High Court in *Swami Satchitanand and others v. The 2nd Addl. Income Tax Officer, Kozhikode and others* (1). Arrears of income tax due from a Society registered under the Societies Registration Act were sought to be recovered from its members. While making reference to the provisions of Sections 6, 8 and 14 of the Societies Registration Act and Sections 3, and 44 of the Income-tax Act, it was held that such arrears could not be recovered from the members of the said Society personally, but they could be recovered from the property of the Society. In *K. Paramasivam Pillai v. Board of Revenue, Madras, and others* (2), the question of recovery of sales tax under the Madras General Sales Tax Act from honorary secretaries of canteen was answered in the negative. It was held that the canteen did not

(1) A.I.R. 1964 Kerala 118.

(2) 1963 Sales Tax Cases 972.

appears to be a firm or partnership or a registered body. Even in the case of registered bodies like the Cosmopolitan Club, Young Men's Indian Association or the canteen of the Integral Coach Factory, it has been held by the said Court as observed that their transactions were not sales assessable to sales tax. Further clarifying the provision of Section 24(2)(b) of the Madras General Sales Tax Act, it was held that the assessment was not made personally against any honorary secretary of the canteen. Since the liability was not personal to him, the tax could not be collected from him. The question of recovery of arrears of sales tax due from a company from the Managing Director was under consideration of this Court in *Surinder Nath Khosla v. Excise and Taxation Commissioner, Punjab, and another* (3). It was held that an incorporated company is a juristic person, a separate entity distinct from any individual shareholder, and the business carried on by the company belonged to it in its juristic capacity, and not to its shareholders. The Managing Director, thus, could not be arrested for realisation of sales tax due under the East Punjab General Sales Tax Act from the limited company.

(7) Since the Board was a Society registered under the Societies Act and as per rules and regulations could acquire and sell property, the recovery of arrears of sales tax imposed on the Board could only be recovered from the property of the Board and not from the members of the Board. That being the position there was *prima facie* case established by the plaintiffs in filing the suit and a reasonable ground appeared for the grant of interim injunction as was granted by the District Judge.

(8) The contention of counsel for the petitioners is that normally recovery of dues to the Government should not be stopped by issuing injunctions. In support of this contention reliance has been placed on the decision of the Supreme Court in *Commissioner of Income-tax, Delhi v. Bansi Dhar and Sons* (4). The ratio of the aforesaid decision is not applicable to the facts of the case in hand as discussed above. If the recovery was to be effected from the property of the Board, obviously there was no question of granting any injunction. Since the arrears are being recovered from persons who were *prima facie* not liable to pay the same the District Judge rightly exercised

(3) 1964 Sales Tax Cases 838.

(4) A.I.R. 1986 S.C. 421.

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discretion in the grant of injunction. It has not been shown that this discretion was exercised illegally in any manner.

(9) Finding no merit in the revision, the same is dismissed. There will be no order as to costs.

S.C.K.

Before : A. L. Bahri, J.

R. P. JAGGA AND OTHERS,—Petitioners.

versus

CALCUTTA ELECTRIC COMPANY AND OTHERS,—Respondents.

Civil Revision No. 2068 of 1990.

27th July, 1990.

Code of Civil Procedure, 1908—O. 41, Rl. 11—Principle of Natural Justice—Affording opportunity of hearing—Notices issued under Rule 11 of Order 41—Counsel not appearing as members of Bar on strike—Adjournment of hearing time and again—Whether such adjournment justified.

Held, that what the principles of natural justice require is only that an opportunity of hearing is to be given to the opposite party while deciding the lis—It is entirely left to the opposite party or the Advocate, representing him to appear and plead the cause. Actual hearing can be given if the counsel puts in appearance and argues the case, otherwise notice of hearing should be considered sufficient as required in Order 41 Rule 11 of the Code of Civil Procedure. The Additional District Judge was not at all justified in postponing the decision on Misc. matters when one of the petitioners, had been appearing in Court and asking for the decision. It was the duty of the Court to go into the merits of the case and give the decision and should not have postponed the hearing merely on the representations of the proxy counsel.

(Para 3)

Petition u/s. 115 C.P.C. for revision of the order of the Court of Shri B. R. Gupta, Addl. District Judge, Chandigarh dated 19th July, 1990 a adjourning the case to the date fixed on 7th November, 1990 as Bar is on strike.

Claim : Suit for eviction and damages.

Claim in Revision : For reversal of the order of the Lower Court.

R. P. Jagga, Advocate, for the Petitioner (In person)