parties an opportunity to lead evidence in support of their respective pleas. The impugned order of the Tribunal does not show that any opportunity was afforded to the petitioners to lead evidence to prove that the reasons stated by the respondent-Management for setting aside the *ex parte* award were false, as had been pleaded by them in answer to the application of the Management. It is no doubt true that the Industrial Tribunal can evolve its own procedure but it must be consistent with the rules of natural justice. The main point in the application argued before the Industrial Tribunal was with regard to the jurisdiction of the Tribunal to entertain and decide the application and while deciding that point in favour of the Management the learned Tribunal in a summary manner held that there was sufficient cause for the non-appearance of Ranjit Singh and Kishan Singh on behalf of the Management on October 26, 1970. I am of the view that the learned Tribunal should have afforded an opportunity of leading evidence to the parties in support of their respective pleas. That not having been done, the impugned order is liable to be set aside on that ground.

(9) For the reasons given above, I hold that the Industrial Tribunal had jurisdiction to entertain the application for setting aside the *ex parte* award made to it by the respondent-Management, but the decision made thereon was in violation of the principles of natural justice. This petition is accordingly accepted and the impugned order is quashed. The Industrial Tribunal is directed to re-decide the application after affording an opportunity of leading evidence to the parties concerned with regard to the sufficiency of cause for non-appearance of the representatives of the Management on October 26, 1970. As no one has appeared on behalf of the respondents, I make no order as to costs.

B.S.G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

STATE BANK OF PATIALA.—*Petitioner.*

versus

UNION OF INDIA ETC.,—*Respondents.*

Civil Writ No. 3578 of 1971.

January 14, 1972.

Income Tax Act (XLIII of 1961)—Section 222—Second Schedule to the Act—Rule 11—Attachment of an assessee's property for recovery of income-tax—Objections to the attachment filed before Tax Recovery Officer—Suit

by objector already pending in civil Court regarding the extent of his interest in the attached property—Tax Recovery Officer—Whether should await the decision of the civil Court.

Held, that under rule 11 of the Rules contained in the Second schedule to Income Tax Act, 1961, the adjudication made by the Tax Recovery Officer with regard to the extent of the interest of the objector in the attached properties is final subject to an adjudication by a civil Court in a suit. Where the suit has already been filed and is pending, it is in the fitness of things that the Tax Recovery Officer should not launch upon an investigation into the claim of the objector which enquiry will be parallel to the enquiry being made by the civil Court in a suit. According to rule 11(6), it is the adjudication by the Civil Court that prevails over the adjudication of the Tax Recovery Officer. Once he is informed that the matter is already *sub judice* in a civil Court, the Tax Recovery Officer should not take upon himself the responsibility of deciding the extent of the interest of the objector in the attached property and should await the decision of the civil Court. (Para 7)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ order or direction be issued quashing the impugned order of attachment passed by Respondent No. 3 on 30th April, 1970 which was effected on 6th May, 1970 and also quashing the order of respondent No. 2 dated 15th June, 1971 and further praying that respondents Nos. 1, 2 and 4 be restrained from selling, alienating or disposing of the attached property.

H. L. Sibal, Senior Advocate with S. C. Sibal, and R. K. Chhibber, Advocates *for the petitioner.*

D. N. Awasthy, Advocate *for the respondents.*

JUDGMENT

TULI, J.—(1) Messrs Khosla Engineering Company, respondent 5, is a partnership firm comprised of respondents 6 to 10, carrying on the business of manufacturing electrical fans, motors and pumping sets at Kapurthala. These respondents opened cash credit accounts with the State Bank of Patiala at Kapurthala (petitioner herein) wherein the petitioner-Bank had agreed to make advances to the extent of Rs. 20 lacs. There were some other accounts of the firm in the Bank. In order to secure the said cash credit accounts and some medium term loans, respondent 5 mortgaged all the land, structures, buildings, plant and machinery situate at Jullundur Road, Kapurthala, with the Bank by way of equitable mortgage by depositing title deeds. On May 15, 1968, the petitioner-Bank filed a suit for the recovery of Rs. 22,59,137.28 and interest thereon against respondents 5 to 10 in the Court of Senior Subordinate Judge,

Kapurthala, on the basis of the said mortgage and prayed for a preliminary decree in terms of Order 34, rule 4, read with Order 34, rule 2, of the Code of Civil Procedure, and some other reliefs including a declaration that the said aggregate sum of Rs. 22,59,137.28 was due from the defendants jointly and severally to the plaintiff as on May 15, 1968. Other reliefs claimed were with regard to the interest on the said amount from May 15, 1968, up to the date of the decree at the rate of 7 per cent. per annum above the Reserve Bank of India rate with a minimum of 12 per cent per annum with monthly rests, and interest on the decreed amount from the date of the decree up to the date of payment at the rate mentioned above. It is, thus, clear from the plaint, a copy of which has been filed with the petition as Annexure 'E', that the suit filed by the petitioner-Bank was on the basis of the mortgage referred to above. That suit is still pending but the amount has been reduced to Rs. 13,34,158.21, as the Bank has received the remaining amount from the Insurance Company on account of the loss occasioned by a fire, which occurred in the factory of the said respondents.

(2) Against respondent 5 an assessment under the Income Tax Act was made which remained unsatisfied. On April 30, 1970, the Tax Recovery Officer, Amritsar, issued an order of attachment of immovable property of respondents 5 to 10 under rule 48 of the Second Schedule to the Income Tax Act, 1961, reading as under :—

> "Whereas you have failed to pay the sum of Rs. 1,20,440.60 plus Rs. 3.00 payable by you in respect of Certificate No. Nil dated 13th March, 1968 forwarded by the Income Tax, Officer, Jullundur, and the interest payable under section 220(2) of the Income Tax Act, 1961, for the period commencing immediately after the said date;
>
> It is ordered that you, the said Khosla Engineering Co., Kapurthala, be and you are prohibited and restrained, until the further order of the undersigned, from transferring or charging the under-mentioned property in any way and that all persons be, and that they are hereby prohibited from taking any benefit under such transfer or charge.
>
> *Specification of property*
>
> Factory building situated at Jullundur Road, Kapurthala."

(3) The petitioner-Bank filed objections to the aforesaid attachment on December 24, 1970, in which it was stated that the attached properties were under mortgage with the Bank and either the attachment should be vacated or the attached properties should be sold without prejudice to the rights and contentions of the Bank and that

the sale should be made subject to the first charge of the Bank to the extent of its dues from respondents 5 to 10 etc. In the objection petition it was stated that the Bank had filed a suit for the recovery of Rs. 22,59,137.28 on the basis of the mortgage against the said respondents on May 15, 1968, but that the present outstandings were Rs. 13,34,158.21 plus interest and other charges due from May 15, 1968, together with future interest etc. It was also mentioned that the said respondents had been retrained by the civil Court from alienating, removing or damaging in any way the mortgaged properties and that an appeal against that order had been rejected by a Division Bench of this Court. The Tax Recovery Officer sent the objections of the petitioner-Bank to the Income Tax Officer for his comments and after receiving the same called upon the petitioner-Bank to prove its interest in the attached properties. On May 25, 1971, the petitioner-Bank filed photostat copies of certain documents and typed copies of others to prove the mortgage in its favour. On June 15, 1971, the case was taken up for arguments when it was objected by the representative of the Income Tax Department that the original documents had not been filed and the documents filed could not be taken into evidence as no witness had been produced to prove them. The Tax Recovery Officer accepted this contention of the representative of the Income Tax Department and dismissed the objections as unproved. The present petition has been filed by the Bank challenging the validity of the said order of the Tax Recovery Officer. Written statement has been filed on behalf of the Tax Recovery Officer in which it has been pleaded that the writ petition is not competent as under rule 11(6) of the Rules contained in the Second Schedule to the Income Tax Act, 1961, the proper remedy of the petitioner-Bank is to file a suit in the civil Court to establish the right which it claims to the property in dispute. On the merits it has been pleaded that the petitioner-Bank did not prove its interest in the attached properties in accordance with the provisions of the Evidence Act.

(4) The provision for the recovery of the income tax from a defaulter is made in section 222 of the Income Tax Act, 1961, which reads as under :—

> "222. (1). When an assessee is in default or is deemed to be in default in making a payment of tax, the Income Tax Officer may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt of

such certificate, shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—

(a) attachment and sale of the assessee's movable property;

(b) attachment and sale of the assessee's immovable property ;

(c) arrest of the assessee and his detention in prison;

(d) appointing a receiver for the management of the assessee's movable and immovable properties.

(2) The Income-tax Officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken."

(5) The rules providing the procedure for recovery of tax under section 222 are contained in the Second Schedule to the said Act. Rule 11 provides for investigation by the Tax Recovery Officer into any claim or objection that may be made to the attachment or sale of a property in execution of a certificate. This rule reads as under:—

"11. *Investigation by Tax Recovery Officer.*—(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay, the arrears, or

(b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer, is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him or that, being in possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

(6) The Tax Recovery Officer who passed the impugned order on June 15, 1971, was Shri C. L. Wali. He was Income Tax Officer

(Collection), 'K' Ward, Jullundur, who wrote the letter dated April 27, 1970, to the Tax Recovery Officer, paragraph 2 of which pertains to the arrears of income-tax outstanding against respondent 5 and reads as under :—

> "Besides shares held by the party, the assessee also has factory building, land and machinery at Kapurthala. I do not know if these have been included in the proclamation order for public sale or not. It is, however, learnt from the assessee that these are already mortgaged with the Bank. You are, therefore, requested to attach factory building etc. order that in the event of sale by the Bank, any surplus over the bank dues may be satisfied towards the income tax arrears. Please send the necessary information as stated at an early date."

(7) From this letter it is clear that Shri C. L. Wali was aware of the fact that the attached properties were under mortgage with the petitioner-Bank, which fact had been communicated to him by the assessee. It can be legitimately inferred from this communication that the assessee, that is, respondents 5 to 10, did not dispute the mortgage of their properties with the Bank and what was under dispute was the extent of the amount due to the petitioner-Bank from them, which was being determined in the suit filed by the petitioner-Bank against them referred to above. On the basis of this fact the Tax Recovery Officer, in my opinion, should not have proceeded to determine the objections filed by the petitioner-Bank because the extent of the interest of the petitioner-Bank in the attached properties was already under adjudication in a civil suit. Under rule 11 the adjudication made by the Tax Recovery Officer with regard to the extent of the interest of the objector in the attached properties is final subject to an adjudication by a civil Court in a suit. Where the suit has already been filed and is pending, it is in the fitness of things that the Tax Recovery Officer should not launch upon an investigation into the claim of the objector which enquiry will be parallel to the enquiry being made by the civil Court in a suit. According to rule 11(6), it is the adjudication by the civil Court that prevails over the adjudication of the Tax Recovery Officer. Once he is informed that the matter is already *sub judice* in a civil Court, the Tax Recovery Officer should not take upon himself the responsibility of deciding the extent of the interest of the objector in the attached property and should await the decision of the civil Court. In the instant case the Tax Recovery Officer erred in

proceeding to decide the objection petition of the petitioner-Bank in spite of the fact that it was brought to his notice that a civil suit in the same matter was pending and the impugned order is liable to be quashed on that ground.

(8) The learned counsel for respondents 1 to 4 has only argued that this petition should be dismissed as the petitioner has got an alternative statutory remedy under rule 11(6) *ibid* and in view of the dispute on facts, this petition should be dismissed leaving the petitioner-Bank to file the necessary suit. I find no substance in this submission. I find no dispute on facts so far as the matter with regard to the attached properties being under mortgage with the petitioner-Bank is concerned. In any case, in view of the suit already pending it will be a mere duplication of that suit if the petitioner-Bank is forced to file another suit for that very relief, as contended by the learned counsel, merely because the Tax Recovery Officer has passed the impugned order dated June 15, 1971. I have already pointed out that in the suit already filed, a declaration is sought that the amount claimed is due from respondents 5 to 10 jointly and severally and that the amount is liable to be recovered from the mortgaged properties. I, therefore, repel this objection.

(9) It is nowhere stated in the Second Schedule to the Income Tax Act, 1961, that the Evidence Act applies to the proceedings before the Tax Recovery Officer under rule 11. The objection with regard to the admissibility of the documents filed by the petitioner-Bank was taken at the time of arguments by the representative of the Income Tax Department and if the Tax Recovery Officer was inclined to give effect to that objection, he should have allowed time to the petitioner-Bank to produce certified copies and witnesses to prove those documents. The Tax Recovery Officer was not justified in rejecting the objection of the petitioner-Bank as unproved on the ground that the documents filed by it were not admissible into evidence. It has been held by their Lordships of the Supreme Court in *Commissioner of Income Tax, West Bengal* v. *East Coast Commercial Co. Ltd.* (1) that the Income Tax authorities are not strictly bound by the rules of evidence. The Tax Recovery Officer ought to have applied his mind to the documents and should have rejected them only if he was not convinced of their genuineness or authenticity. He could not reject them on the ground that that no evidence had been produced to prove those documents. That conclusion he

(1) A.I.R. 1967 S.C. 768.

could arrive at only after affording an opportunity to the petitioner-Bank of leading evidence to prove those documents or affording them an opportunity of filing certified copies of those documents in accordance with the provisions of the Indian Evidence Act. It has been stated in the petition that on that very day, that is, June 15, 1971, the counsel for the petitioner-Bank offered to file the certified copies of certain documents which he had obtained to prove that the attached properties were mortgaged with the **Bank but the Tax** Recovery Officer did not allow him to produce the same. In the return, it has been stated that the application for producing the documents was filed by the counsel for the petitioner-Bank on June 15, 1971, but after the Tax Recovery Officer had pronounced the orders. Be that as it may, the procedure followed by the Tax Recovery Officer is violative of the principles of natural justice and the consequent order passed by him cannot be upheld.

(10) For the reasons given above, this petition is accepted and the impugned order of the Tax Recovery Officer dated June 15, 1971, a copy of which is Annexure 'Z' to the writ petition, is hereby quashed. The Tax Recovery Officer should await the decision of the civil suit or sell the attached properties subject to the claim of the petitioner-Bank as may be found due in the civil suit. In the proclamation of sale, it is necessary to mention the encumbrances to which the attached properties, which are sought to be sold, are subject in order to enable the prospective purchasers to assess the proper value of the interest that is being sold. If the property is brought to sale, the whole claim of the Bank must be mentioned in the proclamation of sale. In the circumstances of the case I make no order as to costs.

N. K. S.

REVISIONAL CIVIL

Before R. S. Narula, J.

GULWANT KAUR.—*Petitioner.*

versus

MOHINDER SINGH ETC.—*Respondents.*

Civil Revision No. 1309 of 1971.

January 18, 1972.

Code of Civil Procedure (Act No. V of 1908)—Order 6, rule 17— New cause of action or new defence—Whether can be added by way of amendment of the pleadings. New plea barred by time—Amendment to add such plea—Whether to be disallowed.