Collector of Customs and Others

Vs

M/s. Soorajmull Nagarmull and Another

Civil Appeal Nos. 429 and 430 (N) of 1966

(CJI M. Hidaytullah, G. K. Mitter, J. M. Shelat, V. Bhargava JJ)

28.03.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. This is an appeal against the judgment and decree of the High Court of Calcutta refusing to enter satisfaction of two decrees under Order XXI, Rule 2 of the Code of Civil Procedure obtained by the respondents against the Union of India in the following circumstances.

2. The respondents M/s. Soorajmull Nagarmull imported spindle oil from Philadelphia. The firm was required to pay Customs Duty under Item 27(3) of the First Schedule to the Tarrif Act, 1934 at 275 ad valorem. The firm filed two suits asking for refund of excess duty claiming that the oil was dutiable only under Item 27(8) at - /2/6 per imperial gallon. The suits were filed against the Collector of Customs, the Assistant Collector of Customs for Appraisement and the Union of India. The suits were successful and decrees were passed against the Union of India for refund of the amount charged in excess. In one suit the decree was for payment of Rs. 43,723/- with interest at 6/per annum from 1st day of April, 1952 until realisation. In the second suit the decree was for Rs. 75,925/- with similar interest.

3. Since the firm had not paid a sum of Rs. 18,08,667.72 as tax the Income-tax Officer, Circle II, Calcutta issued a notice under Section 46(5A) of the Indian Income-tax Act, 1922, calling upon the Collector of Customs to pay the amount of the decree to him and stating that his receipt would constitute a good and sufficient discharge of the liability for refund to the firm. The Collector of Customs paid the amount into the Reserve Bank and the Reserve Bank issued receipts crediting the amount against Super-tax due from the firm. The Collector of Customs then applied to the High Court of Calcutta under Order XXI, Rule 2 of the Code of Civil Procedure for the adjustment of the decrees by this payment. This was refused by a learned single Judge who gave no reasons while dismissing the petition. On appeal to the Division Bench it was held by the Division Bench on January 22, 1964 that the adjustment of the decrees could not be granted. It is against the last order that the present appeals have been filed by special leave of this Court.

4. The High Court in reaching the conclusion observed that the decrees were against the Union of India and not the Collector of Customs. Further the sums were held by the Collector of Customs on behalf of the Union of India and not on behalf of the firm. The High Court found the notice to be defective inasmuch as it asked for payment towards Income-tax and towards penalty, while the receipts which were granted to the firm, stated that the amount was for Super-tax. On these three grounds, the High Court held that the learned single Judge was right in dismissing the application of the Collector of Customs for the adjustment of the decrees.

5. Order XXI, Rule 2 of the Code of Civil Procedure takes note of payments out of court to decree-holders and provides that where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly. It is also provided that the judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause why such payment or adjustment should not be recorded as certified.

6. The contention of the respondents in these appeals is that the decrees were not passed against the Collector of Customs but against the Union of India and that payment by the Collector of Customs was not a payment by the judgment-debtor. In our judgment this plea is highly technical. The amount was recovered by the Collector of Customs from the firm and was being held by the Union of India through the Collector of Customs. The Collector of Customs paid the money not on behalf of himself but on behalf of the Union of India and it must be treated as a proper payment of the amount to the firm. The objection of the respondent that it amounts to a payment by one Department of the Government to another does not, in our opinion, hold much substance. It is also extremely technical. The Union of India operates through different departments and a notice to the Collector of Customs in the circumstances was a proper notice to issue because it was the Collector of Customs who had in the first instance recovered this money and held it from the firm.

7. It is next contended that the notice is defective inasmuch as it shows that the money was lying with the Collector of Customs whereas it was, in fact, lying with the Union of India and that it was not money held by the Collector of Customs on behalf of the firm. Section 46(5A) of the Income-Tax Act reads as follows :

> "46. Mode and time of recovery.
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> (5A). The Income-tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income-tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the tax payer in respect of arrears of income-tax and penalty or the whole of the money when it is equal to or less than that amount.
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> #X X X X X##

Any person making any payment in compliance with a notice under this sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income-tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-

section shall be personally liable to the Income-tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceedings may be taken by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as a attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of Section 46.

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8. Such notices of the Income-tax Officer are no more than a kind of a garnishee order issued to the person holding money which money is due to an assessee. The Collector of Customs had recovered this money and under the decrees of the Court the Union of India was liable to refund it to the firm. A garnishee order is issued to a debtor not to pay to his own creditor but to some third party who has obtained a final Judgment against the creditor. By a parity of reasoning this amount, which was with the Collector of Customs, could be asked to be deposited with the Income-tax Authorities under Section 46(5A). The argument is extremely technical for that the firm is entitled to get a double benefit of the decree, first by having the decretal amount paid to the benefit of the firm and then to recover it again from the Union of India.

9. It is contended lastly that the notice of the Income-tax Officer spoke of Income-tax and/or penalty whereas the amount was taken towards payment of Super-tax due from the firm. It is, however, conceded in the face of authorities cited at the Bar that the Super-tax is also a kind of Income-tax and, therefore, the notice could issue in the form it did. The leading case on the subject is In re Rackitt ((1933) ITR 1) and learned counsel for the respondents did not controvert the proposition laid down there. It is, however, argued on the authority of Bidhoo Beebee v. Keshub Chunder Baboo and Ors (9 wr 462)., Mahizani Loan Office, Ltd. v. Behari Lal Chaki (ILR (1937) 1 Cal 781), A. P. Bagchi v. Mrs. K. Morgan (AIR 1935 all 294) and Thomas Skinner v. Ram Bechsal (ILR 1938 All 294), that the payment which can be adjusted under Order XXI, Rule 2 is a voluntary payment by the judgment-debtor to the decree holder and that this is not a case of voluntary payment at all. The rulings which have been cited do not, in our opinion, apply here. This point was not considered, in the High Court and seems to have been thought of here. Order XXI, Rule 2 merely contemplates payment out of court and says nothing about voluntary payment. A garnishee order can never by its nature lead to a voluntary payment and it is not to be thought that a garnishee order does not lead to the adjustment of the decree of sufficient for being certified by the Court. Payment by virtue of Section 46(5A), as we have stated before, is in the nature of a granishee payment and must, therefore, be subject to the same rule.

10. The ruling themselves do not central the present matter. In 9 WR 462 the payment was not under a granishee order but under the process of the court issued in execution by arrest of the judgment-debtor. Contrasting what had happened in the case with the words of the second rule of Order XXI (then Section 206 of the Code of 1859) the learned Judges observed that Section 206 covers cases of voluntary payment. The debtor was protected by treating the payment as being made through the court. The exact point we are dealing with was not before the Court. In ILR (1937) 1 Cal 781 there was a scheme framed by the depositors of a banking Company for return of their deposit in spite of opposition from decree-holders depositor of the Company. The scheme was sanctioned by the Court. The scheme was binding on the decree-holder but it was not treated as an adjustment within Order XXI, Rule 2 of the Code of Civil Procedure. The reason given was that the adjustment must be to the satisfaction of the decree-holder and must be with the consent of both the decree-holder and the

judgment-debtor and not one which is made binding by operation of law. It is to be noticed that that was a payment to which the judgment-debtor had objected although it was binding on him. We see no reason for making a distinction between a voluntary payment out of court and a payment out of court which the law regards as valid. No reasons are given in the judgment why such a distinction should be made. In ILR (1938) All 294, the payment was made in court and not outside Court. This is the nearest case to the present one and but for this difference, it is reasonable to think that the learned Judges would have taken the same view of the matter as we have taken. The reason given by the learned Judges brings out the real object of the rule :

> "Where a judgment-debtor makes payment outside the Court, the Court knows nothing about the payment and therefore Rule 2, Order XXI ordains that the parties should inform the Court about the payment".

11. This object in our opinion is fully achieved when there is payment under a granishee order outside the Court. In the case cited the Court knew of the payment and could give protection in other ways. In AIR 1935 All 513 the payment was again without the consent of the judgment-debtor either in fact or in law. Too much emphasis appears to have been placed upon mutual undertaking and too little on payment out of court which is the essence of the rule. The case turned on whether there was any understanding between the parties that sums spent by the judgment-debtor on repairs would be set off against the decretal amount and therefore Order XXI, Rule 2 of the Code of Civil Procedure was held inapplicable.

12. In none of the cases of the point of a garnishee order was considered. In our opinion, a case of a garnishee payment or one made under Section 46(5A) of the Income-tax Act of 1922 stands on a different footing and if the payment has been legally made out of Court in full and final discharge of the liability under a decree, there is no reason why the judgment debtor cannot move the Court for getting the adjustment or payment certified. The payment was required to be certified under Order XXI, Rule 2 of the Code of Civil Procedure and we order that it be so certified.

13. The appeals are accordingly allowed with costs here and in the High Court.

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