

Sial Soap Stone Factory

Vs.

State of Madhya Pradesh and Others

Civil Appeal No. 568 of 1972

(H.R. Khanna, R.S. Sarkaria, Jaswant Singh JJ )

18.01.1977

JUDGMENT

KHANNA, J. -

1. This is an appeal against the judgment of the Madhya Pradesh High Court dismissing petition under Article 226 of the Constitution of India filed by the appellant.
2. The appellant is a registered firm. Various sums of money were due from the appellant on account of sales tax. The appellant, however, could not pay those amounts. Recovery certificate for recovery of Rs. 30,000 on account of the sales tax was issued by the sales tax authorities to the Revenue Officer. The Additional Tehsildar Sales Tax, after issuing notices to the appellant, attached immovable and movable properties belonging to the appellant. The said properties were sold by auction on December 8, 1961. Respondent 3 was the highest bidder in those auction-sales. He gave a bid of Rs. 12,000 for the immovable property and of Rs. 21,000 for the movable property. The appellant, after agitating the matter before the revenue authorities, filed petition under Article 226 of the Constitution to challenge the attachment and sale of the said property. The High Court, as stated above, dismissed the petition.
3. It was urged before the High Court on behalf of the appellant that service of the notice which was issued by the Additional Tehsildar was effected by affixation and not personally upon the partners of the appellant-firm. The procedure adopted in this respect, according to the appellant, was not in accordance with the rules of procedure prescribed for the revenue officers and revenue courts regarding the mode of service. The High Court repelled the contention advanced on behalf of the appellant in this respect. The same contention has been advanced on behalf of the appellant before us by its learned Counsel, Mr. Goyal. He has drawn our attention to Rules 11, 12, 13 and 14. According to Rule 11, every notice shall be served by tendering or delivering a copy of it to the person concerned personally or to his recognised agent. Rule 12 provides that where the person concerned cannot be found and has no recognised agent, service may be made on any adult male member of the person concerned, who is residing with him. Rule 13 is to the effect that where the serving officer delivers or tenders a copy of the notice to the person concerned personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is delivered or tendered in token of acknowledgment of service. Then follows Rule 14, according to which, if service of the notice cannot be effected in the manner provided in Rules 11, 12 and 13 a copy thereof may be affixed at the last known place of residence of the person concerned or at some place of public resort in the village in which the land to which the notice relates is situated or from which the land is cultivated.

4. The contention of Mr. Goyal regarding non-compliance with Rules 11 to 14, in our opinion, is not well founded. As mentioned above, service was effect by affixation. The report of the process-server shows that before he affixed the notice, a partner of the appellant-firm had declined to accept the notice. There are a number of other reports which also show that the partners of the appellant declined on various occasions to accept notices which were sent to them in connection with the recovery proceedings. There can also be no manner of doubt that the partners of the appellant-firm were aware of the attachment and the proposed auction-sale of the properties in question. We may refer in this connection to a letter dated November 24, 1967 addressed by a partner of the appellant-firm to the sales tax recovery officer. In the said letter, it was admitted by the partner of the appellant-firm that he had received notice of the auction of the properties in dispute. On an earlier occasion the Counsel for the appellant prayed for time to pay the amount of the sales tax due. The amount, however, was not paid in spite of the fact that ten days' time was granted to do the needful. We, therefore, find no valid ground to interfere with the judgment of the High Court, dismissing the writ petition filed by the appellant. The appeal fails and is dismissed, but in the circumstances without costs.

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