

A

R. BALASUBRAMANIAM

v.

ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER

MARCH 9, 2007

B

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Taxation:

C

Demand of tax arrears pursuant to purchase of property—Writ petition filed by assessee-appellant dismissed—Writ appeal—Interim order passed by High Court granting stay subject to assessee depositing 50% of the total tax assessed—During pendency of appeal before Supreme Court, property purchased by assessee attached—Held: Interest of Respondent is fully safeguarded by the said order of attachment—Therefore, order of deposit by

D

High Court set aside—High Court to dispose of Writ Appeal on merits and in accordance with law—Attachment order to continue till disposal of writ appeal—Interim order.

E

Assessment proceedings were initiated demanding tax arrears pursuant to purchase of property by Appellant-assessee. Appellant filed writ petition before High Court challenging the assessment proceedings. The writ petition was dismissed. Appellant filed Writ appeal which is pending final disposal before the High Court. During pendency of the Writ Appeal, High Court directed the Appellant to deposit 50% of the total tax due to the respondent. The said interim order of the High Court has been challenged in the present

F

appeal.

Disposing of the appeal, the Court

G

HELD: This Court while ordering notice to the respondent ordered attachment of the property purchased by the appellant shall continue and no further steps will be taken until further orders by this Court. Since there is an order of attachment during the pendency of Appeal in this Court, the interest of the respondent is fully safeguarded by the said Order. Therefore, the order passed by the High Court ordering deposit of 50% of the total tax due is set aside and the High Court is requested to dispose of Writ Appeal

H

filed by the appellant on merits and in accordance with law. It is also made clear that the attachment order passed by this Court will continue till the disposal of the Writ Appeal. [Paras 4 and 5] [892-D, E, F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1244 of 2007.

From the Final Judgment and Order dated 22.08.2005 of the Madras High Court (Madurai Bench, Madurai) in W.A. Misc. Petition (MD) No. 153 of 2005 in W.A. (MD) No. 130 of 2005. B

Immanuel, J.C. Rose and B. Partha Sarthy for the Appellant.

R. Nedumaram for the Respondent. C

The Judgment of the Court was delivered by

Dr. AR. LAKSHMANAN, J. 1. Leave granted.

2. Heard Mr.Immanuel, learned counsel for the appellant and Mr.R.Nedumaran, learned counsel for the respondent. D

3. We have perused the order impugned in this appeal which reads thus:-

“ORDER E

This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. A. Immanuel, Advocate for the petitioner, the Court made the following order:-

Heard both side. F

2. Interim stay is made absolute subject to the condition that the petitioner/appellant deposits 50% of the total tax due to the respondent within a period of eight weeks, failing which the stay granted shall stand automatically vacated." G

4. The matters relates to the sales tax arrears of vendee-appellant. According to the appellant, the sales transaction was completed in the year 2000 and the proceedings were initiated against him by a notice issued by the Addl.Deputy Commercial Tax Officer- Iii, Tuticorn on 31.07.2002 and an assessment order was passed 06.12.2004 against the assessee M/s.Blesso H

- A Construction and P.J. Engineering Constructions fixing the total tax due at Rs.83,53,477/- by way of tax arrears including penalty etc. A Demand Notice was issued to the appellant-assessee R.Balasubramaniam to pay the arrears of tax due since the appellant has purchased the property and is in possession of the property in S.No.495/1A2, 495/1B2. It is not in dispute that the appellant has purchased the property in question for Rs.4,90,000/- as could be seen from the sale deed. According to the appellant, he was a bonafide purchaser. It is also not in dispute that against the dismissal of the Writ Petition filed by the appellant challenging the said assessment, the appellant preferred the Writ Appeal which is pending final disposal before the High Court and during the pendency of the Writ Appeal, the Division Bench of the High Court directed the appellant to deposit 50% of the total tax due to the respondent within a period of eight weeks, failing which the stay granted shall stand automatically vacated. Aggrieved by the said interim order, the appellant preferred the above appeal in this Court and this Court on 28.11.2005 while ordering notice to the respondent ordered attachment of the property purchased by the appellant shall continue and no further steps will be taken until further orders by this Court. Since there is an order of attachment during the pendency of the Civil Appeal in this Court, the interest of the respondent is fully safeguarded by the said Order. We, therefore, set aside the order passed by the High Court ordering deposit of 50% of the total tax due and request the High Court to dispose of Writ Appeal filed by the appellant on merits and in accordance with law.

5. We also make it clear that the attachment order passed by this Court will continue till the disposal of the Writ Appeal. The appeal stands disposed of accordingly.

- F B.B.B. Appeal disposed of.