

Court No. - 19

Case :- FIRST APPEAL No. - 120 of 1987

Appellant :- State Of U.P. Thr. Collector Sitapur

Respondent :- M/S Balaji Vegetable Products Pvt. Ltd.

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- H.S. Sahai

Hon'ble Jaspreet Singh,J.

The State has approached this Court by filing a first appeal under Section 96 CPC against the judgment and decree dated 30.05.1987 passed in Regular Suit No.26 of 1983 whereby the suit for permanent injunction instituted by the plaintiff-respondent was decreed.

In order to appreciate the controversy involved in the instant first appeal, briefly the facts giving rise to the appeal are being noticed hereinafter.

M/s Balaji Vegetable Product Pvt. Ltd. filed a suit for injunction against the State of U.P. in Court of Civil Judge, Sitapur bearing No.26 of 1983 and relief was sought that the State Authority be restrained from disturbing or interfering in the peaceful possession of the plaintiff in respect of the factory, assets both movable and immovable by making recovery in any manner regarding the sale tax assessment done against M/s Narain Vegetable Product or Laxmiji Sugar Mill Co. Pvt. Ltd.

The plaintiff-respondent instituted the suit with the averments that the plaintiff had purchased the assets and liability of M/s Narain Vegetable Product which was a unit of M/s Laxmi Sugar Mill Co. Pvt. Ltd. having its registered office in New Delhi under an agreement dated 17.12.1975.

It was also pleaded that in part performance of the aforesaid agreement, the plaintiff was put in peaceful possession of the assets as they existed on 03.01.1976 and since then the plaintiff has

been running its business in the name of style of M/s Balaji Vegetable Product Pvt. Ltd. It was also pleaded that in terms of the agreement, the plaintiff had undertaken to pay of a sum of Rs.18,88,829.33 of the sale tax dues of its vendor, namely, Narain Vegetable Product. It is also stated that if the plaintiff has been in possession and use of the factory, its premises and assets and even though the plaintiff had complied with his obligations and wanted the vendor, namely, Narain Vegetable Product to execute a sale deed and since they hesitated to do so, the plaintiff had filed a suit seeking Specific Performance of Contract before the Additional District Judge wherein the suit was pending bearing No.91 of 1981.

It was further pleaded that the plaintiff had also entered into an agreement that the sale tax liability which was limited to Rs.18,86,829.33, the same would be paid in installments, to which the State had agreed and in the aforesaid backdrop, it was urged that the respondent could not press the sale tax recovery from the plaintiff or his assets which had come into his possession on account of the agreement executed by Narain Vegetable Product in favour of the plaintiff dated 17.12.1975.

It was also pleaded that the State had right to recover all its outstanding dues from the assessee and needless to say that apart from the property which had been purchased under an agreement to sell by the plaintiff could not be touched and the recovery if any could be made by any other and all other property of Narain Vegetable Product which was unit of M/s Laxmiji Sugar Mill Co. Pvt. Ltd. It is in the aforesaid backdrop that the suit was filed.

The State filed its written statement controverting the averments of the plaint and primarily raised a three layered defence. It was stated that the agreement to sell executed by Narain Vegetable Product which was a unit of Laxmiji Sugar Mill Co. Pvt. Ltd. could not confer any benefit merely on the strength of the agreement to sell. It was also stated that in view of Section 17 of the Uttar Pradesh Sales Tax Act, the suit was not maintainable and it was without jurisdiction. It was

also urged that the agreement being relied upon by the plaintiff being an unregistered document could not confer any title in the plaintiff and that too to avoid the recovery of sale tax, hence in the aforesaid circumstances, the suit was liable to be dismissed.

Upon the exchange of pleading, the trial court framed seven issues. However, the main issues on which the suit was contested was whether the defendant was:- **(i)** entitled to make recovery of sales tax assessment dues relating to Narain Vegetable Product which was a unit of Laxmiji Sugar Mill Co. Pvt. Ltd. from a different entity i.e. the plaintiff who were a different unit and entity all together, namely M/s Balaji Vegetable Product Pvt. Ltd. **(ii)** Whether the suit was barred by provision of Section 17 of the Uttar Pradesh Sales Tax Act.

After leading the evidence both oral and documentary. The trial court while considering the issue no.1 recorded a finding that the State Authorities were not entitled to recover the dues of another entity, namely Narain Vegetable Product Pvt. Ltd. which was a unit of Laxmiji Sugar Mill Co. Pvt. Ltd. from a separate entity i.e. M/s Balaji Vegetable Product Pvt. Ltd.

It was also noticed by the trial court that if at all the defendant wanted they could have recovered the dues from the other property of the assessee but without exhausting the said remedy merely trying to auction the property which has been taken over by Balaji Vegetable Product Pvt. Ltd. which was a different entity and had an agreement in his favour which had been made as the subject matter of seeking a decree of specific performance, consequently the dues of one person cannot be taken on the other.

The trial court also noticed that there was no bar of Section 17 of the U.P. Sales Tax Act and with the aforesaid finding it decreed the suit by means of judgment and decree dated 30.05.1987.

It is this judgment and decree which is under challenge before this Court in the instant first appeal.

As noticed above, none has put in appearance on behalf of the respondent even though the notice were sent by ordinary as well as speed post and later it was also got published in the local newspaper and finding that the service on the respondent is sufficient. The Court has proceeded to hear the learned Additional Chief Standing Counsel for the State in support of the appeal.

Submission of Shri J. P. Maurya, learned counsel for the appellant is that the alleged agreement which is relied upon by the plaintiff-respondent dated 17.12.1975 was an unregistered agreement. It was not even appropriately stamped, thus it was inadmissible in evidence and the trial court could not have taken note of the same.

It is further urged that there was a dispute in terms whereof Narain Vegetable Product which was was a unit of Laxmiji Sugar Mill Co. Pvt. Ltd. were required to liquidate its sales tax dues and in order to avoid the same. The assets both movable and immovable of factory was sold by Narain Vegetable Product Pvt. Ltd. under the agreement in favour of the Balaji Vegetable Product Pvt. Ltd.

It is also submitted by the counsel for the State that though it has received the same part of the dues which was undertaken by the plaintiff-respondent but that in itself is not sufficient and the State had the right to recover the outstanding dues. Since the plaintiff-respondent had purchased the said assets upon which the State dues were outstanding, consequently the Court ought not to have restrained the Tax Authority from collecting its dues and thus this aspect has not been considered by the trial court while decreeing the suit.

Having heard the learned counsel for the State, the point for determination that arises in the instant appeal is:- (i) Whether the suit for injunction was maintainable seeking to restrain the State Authority from interfering in the possession of the plaintiff for pressing recovery against the assets which was purchased by the plaintiff-respondent from M/s Narain Vegetable Product a unit M/s Laxmiji Sugar Mill Co. Pvt. Ltd.

Having considered the aforesaid submissions and from the perusal of the material on record, this Court finds that the basic pleading the movable and immovable property was purchased from Narain Vegetable Product which was a unit of Laxmiji Sugar Mill Co. Pvt. Ltd. by the plaintiff.

In so far as the movable properties are concerned, the same can be sold in accordance with law by merely executing an agreement and after the exchange of the consideration and handing over the possession and the same becomes complete. However, in so far as the immovable property is concerned, the same can only reach fruition once a sale document is executed. In the aforesaid circumstances, there is nothing on record nor any evidence led by the State Authorities to indicate that any Assessing Authority had attached any property of Narain Vegetable Product. Without any attachment order or a restrain order passed by any competent Assessing Authority, Narain Vegetable Product was well within its right to transfer any or all of the property as there is no embargo. Once Narain Vegetable Product had sold the property under the agreement and in so far as the movable properties are concerned, the same vested with the plaintiff-respondent and in respect of the immovable properties, the plaintiff-respondent had already filed a suit for specific performance of contract which was engaging the attention of the competent court, in such circumstances, there was no occasion for the State Authorities to recover the outstanding liabilities from the plaintiff-respondent.

The defendant who is the appellant before this Court could not show any material or evidence that as to what efforts were made by the State to recover the outstanding tax liability from the assessee from other assets of Narain Vegetable Products or of M/s Laxmiji Sugar Mill Co. Pvt. Ltd. The State Authority also could not dispute the fact that they had entered into an agreement and had permitted the plaintiff to pay the outstanding sales tax dues only to the tune of Rs.18,86,829.33.

A specific averment was made in the plaint in paragraph-3 that the plaintiff had already paid

3/4th of the amount of Rs.18,86,829.33 and the remaining was to be paid under the installments as fixed by the State Government. Nothing has been shown by the appellant that such an agreement or arrangement was not arrived at. Moreover, it was also not denied that the plaintiff had liquidated the limited liability, it had undertaken.

In light of the aforesaid facts and circumstances where the plaintiff had filed a suit for simplicitor injunction, it cannot be said that the findings arrived at by the trial court are erroneous. Moreover, the defendant, State Authority could not establish as to how they were entitled to recover the dues from the property belonging to a separate entity i.e. plaintiff.

Considering the aforesaid decree of injunction was granted only to the limited extent that the dues of Narain Vegetable Products Pvt. Ltd. may not be enforced for recovery from the plaintiff while it was always open for the State Authorities to recover the same from the original assessee i.e. Narain Vegetable Product Pvt. Ltd. who was a unit of M/s Laxmiji Sugar Mill Co. Pvt. Ltd. In light of the aforesaid, this Court does not find that there is any error committed by the trial court while decreeing the suit.

Accordingly for the aforesaid reason, the judgment and decree passed by the trial court dated 30.05.1987 passed in Regular Suit No.26 of 1983 is affirmed. The instant first appeal is devoid of merits and is, accordingly, dismissed. The record be returned forthwith.

Order Date :- 18.11.2023

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