NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 300 OF 2015

1. Nemichand Nahar, aged about 64 years, (Now 78 years), S/o Late Shri C.L. Nahar, Proprietor M/s N.C. Nahar, Malviya Nagar, Durg, Tahsil & District-Durg (C.G.)

2. Smt. Swaroop Bai Nahar, aged about 64 years (Now 72 years), W/o Shri Nemichand Nahar, Proprietor M/s J.K. Transport, Malviya Nagar, Durg, through Attorney Shri N.C. Nahar S/o Late Shri Chunni Lal Nahar, Malviya Nagar, Durg, Tahsil & District Durg (C.G.)

... Appellants

Versus

1. Commissioner of Income Tax Prosecution, Chhattisgarh Raipur, Tahsil and District - Raipur (C.G.)

2. Additional Director of Income Tax Investigation-I, Raipur, Tahsil and District- Raipur (C.G.)

3. Deputy Commissioner of Income Tax Circle Bhilai, District Durg (C.G.)

4. Income Tax Officer Ward-I, Chandrapur (Maharashtra)

... Respondents

For Appellants	:	Mr. S.C. Verma, Advocate.
For Respondents	:	Mr. Amit Chaudhari, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgement on Board

Per NAVIN SINHA, C.J.

23/06/2015

1. The present Appeal arises from order dated 25.3.2015 dismissing Writ Petition No. 942 of 2001.

2. Learned Counsel for the Appellants submits that the Respondent department on 11.11.1997 had directed M/s Lyods Metals & Engineering Limited to withhold dues of Rs. 22,75,200/- and Rs.3,23,400/- standing to the credit of the Appellants in their books of account pending completion of investigation into the search and seizure carried out in the premises of the Appellants. Thereafter, the Income Tax authorities assessed the tax liability of the Appellants at Rs. 8,29,000/- only, which was recovered from the aforesaid amounts lying to the credit of the Appellants with M/s Lyods Metals & Engineering Limited. The balance amount was never paid to the Appellants by M/s Lyods Metals & Engineering Limited and could not be construed as its income liable to tax. The authorities have wrongly issued a fresh notice on 22.5.2015 assessing the tax liability of Rs.26.79 Lakh.

3. Learned Counsel for the Respondent department has opposed the application as not maintainable.

4. The official and residential premises of the Appellants were subjected to search and seizure under Section 132 of the Income Tax Act. On 11.11.1997, the Respondents directed the President, M/s Lyods Metals & Engineering Limited not to release any amount standing in their book of accounts as credit payable to the Appellants. On 12.12.1997, the Appellants also wrote to the Respondents that any dues recoverable from them may be recovered from their outstanding payments due from M/s Lyods Metals & Engineering Limited. The credit amount outstanding in the name of the Appellants, in the book of accounts of M/s Lyods Metals & Engineering Limited at this time stood at Rs.22,75,200/- and another at Rs.3,23,400/-. The Respondents pursuant to the search and seizure assessed the liability of the Appellants at Rs.8,29,000/-. This was recovered from M/s Lyods Metals & Engineering Limited outstanding to the credit of the Appellants. The balance amount standing to the credit of the Appellants in the book of accounts of M/s Lyods Metals & Engineering Limited therefore stood released as the order of the Respondents dated 11.11.1997 had worked itself out. The learned Single Judge therefore rightly held that if the balance amount of credit outstanding in the name of the Appellants was not being released by M/s Lyods Metals & Engineering Limited, it was purely a private dispute between the Appellants and the latter with which the Respondents had no concern. We also find that M/s Lyods Metals & Engineering Limited had not even been made a party Respondent in the Writ Petition assuming that the claim in the facts could have been considered in the writ jurisdiction against a private person.

5. We therefore find no reason to defer the view taken by the learned Single Judge in paragraph 7 of the order that the Writ Petition was not maintainable for a private money claim against M/s Lyods Metals & Engineering Limited.

6. It is open for the Appellants to take steps in accordance with law as they may be advised with regard to notice dated 22.5.2015 which is a fresh cause of action and about which we say nothing.

7. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

/sharad/

4. The official and residential premises of the Appellant company was subjected to search and seizure under Section 132 of the Income Tax Act. On 11.11.1997, the Respondent department directed the President of M/s Lyods Metals & Engineering Limited not to release any credit balance in the name of the Appellants. The outstanding credit balance of the Appellants in the books of M/s Lyods Metals & Engineering Limited at this time was Rs.22,75,200/- and another Rs.3,23,400/-. Out of the aforesaid amounts directed to be withheld, the Respondent department finally recovered a sum of Rs.8,29,000/- payable by the Appellants from the amount standing to their credit in the books of M/s Lyods Metals & Engineering Limited. The Appellants itself on 22.12.1997 had requested the Respondent department to recover any amount payable by it from M/s Lyods Metals & Engineering Limited. It was not the case of the Appellants in the Writ Petition that because of the attachment of the amount as aforesaid by the department, the Appellants could not raise a demand or recover the amount and has suffered in its business. Obviously, this was on account of M/s Lyods Metals & Engineering Limited not paying the amount standing to the credit of the Appellants even after the Income Tax department had recovered its dues and its order dated 11.11.1997 had worked itself out. In a sense, as rightly held by the learned Single Judge, the Appellants were basically seeking payment of the balance amount to its credit in the accounts of M/s Lyods Metals & Engineering Limited after the order dated 11.11.1997 had worked itself out. M/s Lyods Metals & Engineering Limited was not even made a party Respondent in the Writ Petition assuming that the claim could have been considered in the writ jurisdiction against a private person.