



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

**W.A(MD)No.282 of 2011
and
M.P(MD)No.1 of 2011**

M.Srinivasan

... Appellant/Petitioner

Vs.

1. The District Collector,
District Collectorate,
Trichy - 1,
Trichy District.

2. The Divisional Excise Officer,
Divisional Excise Office,
Musiri,
Trichy District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, dated 18.11.2010 made in W.P(MD)No.10293 of 2007, on the file of this Court.

Prayer in WP(MD). 10293/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records relating to the 2nd respondents notification made in Na.Ka.B1/1102/83 dated 27.11.2007 and quash the same.

For Appellant

: Mr.P.Sundar

For Respondents

: Mr.M.Murugan,
Government Advocate.

**JUDGMENT**

(Judgment of the Court was delivered by
M. SATHYANARAYANAN, J.)

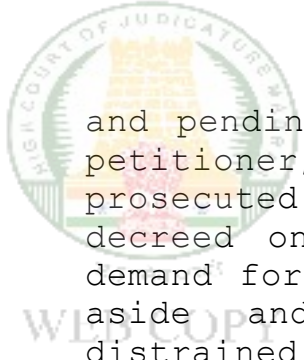
The writ petitioner is the appellant and he made a challenge to the impugned distraint notice, dated 27.11.2007 passed by the second respondent and after contest, the Writ Petition was dismissed on 18.11.2010 and challenging the legality of the same, he has filed the present Writ Appeal.

2.The learned counsel appearing for the appellant has drawn the attention of this Court to the typed-set of documents and would submit that the father of the petitioner, namely Manickam Nadar, had filed a suit in O.S.No.2056 of 1983, on the file of the Court of the District Munsif, Trichirappalli, against the respondents herein praying for a declaration of the proceedings of the second respondent, dated 11.10.1983 in raising a demand of Rs.1,40,437/- as a notional loss is unsustainable and also for permanent injunction restraining them from collecting the said amount and the said suit, after contest, came to be decreed on 26.08.1991. The defendants therein made a challenge to the said Judgment and Decree by filing an appeal in A.S.No.250 of 1992, on the file of the Court of the First Additional Subordinate Judge, Trichirappalli and the lower Appellate Court, vide Judgment, dated 28.12.1993 has dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court and in the light of the same, the impugned distraint notice passed by the second respondent is wholly unsustainable and the learned Judge, without misconstruing some observations made by the lower Appellate Court, has erroneously dismissed the Writ Petition and prays for interference.

3.Per contra, the learned Government Advocate, appearing for the respondents has drawn the attention of this Court to paragraph No.21 of the Judgment of the lower Appellate Court in A.S.No.250 of 1992 and would submit that the lower Appellate Court had made an observation as to the non-adherence of principles of natural justice and since it is a technical ground, the second respondent is having jurisdiction to issue impugned distraint notice and the said fact was rightly taken note of by the learned Judge and dismissed the Writ Petition and prays for dismissal of this Writ Appeal.

4.This Court has considered the rival submissions and perused the materials placed on record.

5.The father of the petitioner filed a suit in O.S.No.2056 of 1983 on the file of the Court of the District Munsif, Trichirappalli, against the respondents herein for the said relief

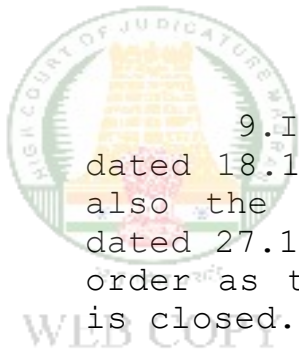


and pending disposal of the suit, he died and in his place, the petitioner, who is the son of the plaintiff, came on record and he prosecuted the said suit and after contest, the said suit was decreed on 26.08.1991. The result of the same is the impugned demand for a sum of Rs.1,40,437/- as notional loss, has been set aside and the respondents/defendants are also permanently distrained from raising, any such demand. The defendants, who are the respondents herein, made a challenge to the said Judgment and Decree passed by the trial Court by filing an appeal in A.S.No.250 of 1992. The lower Appellate Court in paragraph No.21 of the Judgment, though observed that the impugned distraint notice came to be passed in the violation of principles of natural justice, ultimately dismissed the said Judgment and Decree, vide proceedings, dated 28.12.1993.

6.The Judgment and Decree passed by the trial Court has been confirmed by the lower Appellate Court and it is to be noted that the lower Appellate Court did not remand the matter to the appellants therein, who are the respondents herein, for fresh adjudication.

7.The learned Judge found that the lower Appellate Court has observed as to the non-adherence of the principles of natural justice and therefore, it is open to the respondents therein to demand notional loss and further observed that the decision of the civil Court is only a technical factor and did not find fault with the show-cause notice.

8.In the considered opinion of this Court, the said reasons are wholly unsustainable for the reason that the suit in O.S.No.2056 of 1983 is filed by the father of the petitioner and after his demise, it was prosecuted by the appellant herein and as per the Judgment and Decree, the defendants, who are arrayed as respondents herein, are restrained from raising any demand as to the notional loss of Rs.1,40,437/- and that apart, a declarative decree has also been given declaring that the demand as null and void and the said Judgment and Decree came to be confirmed by the lower Appellate Court vide Judgment and Decree, dated 28.12.1993 in A.S.No.250 of 1992. Though the lower Appellate Court in paragraph No.21 made some observations as to the non-adherence of principles of natural Justice, ultimately dismissed the appeal and thereby confirmed the Judgment and Decree passed by the trial Court and as such, it is not open to the respondents to raise the very same demand. The matter in issue has reached finality and it is to be remembered at this juncture that it is an concurrent Judgment and also reached its finality and as such, it is not open to the respondents to issue impugned distraint notice. Hence for the reasons assigned above, the impugned order passed in the Writ Petition No.2056 of 1983 as the original impugned distraint notice passed by the second respondent warrant interference.



9. In the result, this Writ Appeal is allowed and the order, dated 18.11.2010 made in W.P(MD)No.10293 of 2007 is set aside, so also the impugned distraint notice of the second respondent, dated 27.11.2007. However, in the circumstances, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
District Collectorate,
Trichy - 1,
Trichy District.
2. The Divisional Excise Officer,
Divisional Excise Office,
Musiri,
Trichy District.

+ 1 cc TO Mr.R.Sundar , Advocate in SR No. 53261
+ 1 cc TO The Special Government Pleader in SR No. 53576

ps
VB/SV MMS/SAR4/20.03.2018/4P/5C

**W.A(MD)No.282 of 2011
and
M.P(MD)No.1 of 2011
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