

Item No.14.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 28.09.2022

DELIVERED ON:28.09.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA**

**M.A.T. No.1501 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022**

**Deepak Kumar Das & Anr.
Vs.
State of West Bengal & Ors.**

Appearance:-

Ms. Sweta Mukherjee

..... for the appellants.

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. V. Kothari**

.... for the State.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

Re: I.A. No.CAN 1 of 2022

1. This application has been filed to condone the delay of 111 days in filing the instant appeal.
2. We have heard Ms. Sweta Mukherjee, learned counsel appearing for the appellants and Mr. T.M. Siddique, learned Government counsel appearing for the respondents/State.
3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. Accordingly, the delay in filing the instant appeal is condoned.
4. The application being I.A. No. CAN 1 of 2022 is allowed.

Re: M.A.T. NO.1501 of 2022

5. This intra-Court appeal is directed against the order dated 26th April, 2022 in W.P.A. No.6389 of 2022. By the said order, the learned Single Bench did not grant any interim protection during the pendency of the writ petition and directed affidavit to be filed by the respondents. Aggrieved by the same, the appellants are before us.

6. We have heard Ms. Sweta Mukherjee, learned counsel appearing for the appellants and Mr. T.M. Siddique, learned Government counsel appearing for the respondents/State.

7. The issue involved in this writ petition is whether the bank accounts of the appellants, the second appellant being the son of the first appellant could have been attached by a garnishee notice. The appellants' case is that the second appellant was carrying on a partnership business along with one Mr. Pallab Kumar Basu and the partnership stood dissolved pursuant to a dissolution agreement, which is duly intimated to the department and all of a sudden, alleging that certain dues are there for the assessment year 2014-2015, the garnishee notice has been issued not only to the second appellant but also to his father, the first appellant, who is employed in a high position in the railways. Therefore, the appellants would submit that no liability can be fastened on the appellants.

8. The learned Advocate appearing for the appellants would refer to the recovery report, which was submitted by the tax recovery officer, Calcutta and 24 Parganas dated 11th April, 2022 wherein the assessee has been referred as S. K. Enterprise, Proprietor Pallab Kumar Basu. Therefore, it is the submission of the learned Advocate for the appellants that the department

is aware that the said S. K. Enterprise is no longer a partnership firm but a proprietorship concern.

9. However, these aspects have to be gone into by the tax recovery officer as the second appellant has already submitted a representation for revoking the garnishee notice.

10. Considering the facts and circumstances of the case, we are of the view that this appeal as well as the writ petition can be disposed of by the following directions.

11. The respondent authority is directed to lift the attachment of the first appellant's bank account and the attachment on the second appellant's bank account shall continue with a direction to the tax recovery officer to consider the prayer made by the second appellant for lifting the attachment of his bank account. In this regard, the second appellant is directed to give a fresh representation setting out all facts within a period of three weeks from the date of receipt of the server copy of this judgment and order. On receipt of the said representation, the tax recovery officer concerned shall consider the same on merits and in accordance with law, afford an opportunity of personal hearing to the second appellant and pass a speaking order within a period of three weeks thereafter.

12. With the aforesaid direction, the writ petition, the appeal and the connected application stand disposed of.

13. There shall be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB (AR.C)