**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-3429 of 1998
Reserved on: 22.05.2024
Pronounced on: 31.05.2024

Satya Rani (deceased) through LRs
......Appellant(s)

Versus

Punjab State Electricity Board (now PSPCL) and others
......Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Surinder Garg, Advocate, for the appellant.
Ms. Simurita Singh, Advocate, for the respondents.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 17.05.1996, passed by the Court of learned Civil Judge (Junior Division), Faridkot, whereby suit for declaration filed by the appellant-plaintiff was dismissed as well as against the judgment and decree dated 09.09.1998, passed by the Court of learned Additional District Judge, Faridkot, whereby appeal preferred by the appellant against the judgment and decree dated 17.05.1996 also met the same fate.

2. For convenience sake, reference to the parties is being made as per their status in the civil suit. Plaintiff filed a suit for declaration pleading therein that Prince Kumar was posted as JE II at Sub Division, Punjab State Electricity Board, Baghapurana, and he died on 15.01.1992 during his employment at Baghapurana. Plaintiff being widow of said Prince Kumar was granted the benefit of family pension

vide order dated 03.02.1993 by the defendants. It was further pleaded that plaintiff was released the gratuity of Rs.74,250/-, however, an amount of Rs.58,202/- was deducted by the defendants without any rhyme and reasons and remaining amount of Rs.16,048/- was paid to the plaintiff, which she received under protest. It was further pleaded that plaintiff is entitled to get amount of Rs.58,202/-, illegally deducted by the defendants. She was also entitled to bonus, arrears of salary and leave arrears, which had been withheld by the defendants illegally.

3. Upon notice, defendants appeared and filed their joint written statement admitting the employment of Prince Kumar as JE II and his death. However, it was averred that there was shortage of Rs.58,202/- in the stock of deceased Prince Kumar and as such the said amount was adjusted towards his amount of gratuity under Rules and remaining amount of Rs.16,048/- was paid to the plaintiff.

4. Plaintiff filed replication reiterating the assertions made in the plaint and denying those taken by the defendants in the written statement.

5. On the pleadings of the parties, following issues were framed.

1. Whether order dated 11.10.1993 of defendant No.3 of recovery of Rs.58,202/- is illegal, null and void on the grounds mentioned in the plaint? OPP

2. Whether the plaintiff is entitled to declaration as prayed for? OPP

3. Whether plaintiff is entitled to mandatory injunction? OPP

4. Whether amount was adjusted towards the amount of gratuity under the rules and remaining amount has been paid by the plaintiff as alleged? OPD

5. Relief.

6. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 17.05.1996.

7. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 09.09.1998.

8. Learned counsel for the appellant contended judgments and decree passed by the Courts below are against law and facts, therefore, are not sustainable in the eyes of law as both the Courts below have failed to appreciate that no recovery can be made from the amount of gratuity to be paid to the LRs of the deceased employee. He further contended that alleged shortage pertains to the period from September, 1981 to October, 1984 and recovery has been made in the year 1993. He further contended that no notice or charge-sheet was ever issued to the deceased Prince Kumar for the alleged shortage during his life-time, therefore, order of recovery dated 11.10.1993 was null and void and the Courts below ought to have set aside the same. In support of his contentions, learned counsel placed reliance upon the judgment of a Co-ordinate Bench of this Court in ***Ex Naik Bhag Chand v. Director General of Police, CRPF and others, 2024 LIC 1694***.

9. On the other hand, learned counsel for the respondents supported the judgments and decrees of the Courts below and contended that same are legal and valid. She contended that

respondents-defendants were well within their rights to deduct the amount from the deceased's gratuity as there was shortage of fund in the electrical measurement book which was maintained by the deceased himself and he owed the amount to the respondents.

10. I have heard learned counsel for the parties and perused the record.

11. The present appeal was admitted on 20.01.1990.

12. This Court in ***Naik Bhag Chand's*** case (supra) while relying upon the judgment of the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (White Washer) etc., 2015(4) SCC 334*** has held that no recovery can be effected from the legal heirs of the deceased employee. Relevant portion from the said judgment reads as under: -

> *"7. Supreme Court in State of Punjab Vs. Rafiq Masih (White Washer) etc 2015 (4) SCC 334 has laid down circumstances where no recovery can be effected from an employee despite excess payment. The circumstances enumerated in the judgment are not conclusive. The circumstances where the Court has categorically held that no recovery shall be effected are reproduced as below :*
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> > *"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

(emphasis supplied)

8. Hon'ble Supreme Court in State of Punjab vs. Jullundur Vegetables Syndicate (1966) 2 SCR 457 while dealing with recovery of sales tax dues has held that recovery in the absence of specific provision in the Act cannot be made from legal heirs of a dealer. The said opinion has been reiterated by Supreme Court in Shabina Abraham and others vs. Collector of Central Excise and Customs, *(2015) 34 GSTR 146 while dealing with recovery under Central Excise Act, 1944. The Supreme Court has clearly held that in the absence of statutory provision, no recovery can be effected from legal heirs of an individual. As there is no provision under Central Excise Act, no recovery can be effected from legal heirs of a deceased assessee. The relevant extracts of the judgment of Supreme Court in Shabina Abraham's case (supra) read as:*

> *"Nothing is certain except death and taxes". Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/ manufacturer after he is dead. The facts of the case are as follows.*
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> *xxx xxx xxx*
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> *23. The question that arose in the aforesaid case was whether a dissolved firm could be reassessed to sales tax in respect of its pre-dissolution turnover. By a two to one (2:1), decision, this court held that the Bombay Act contained the necessary provisions to reassess such a dissolved firm in respect of its predissolution turnover. The majority judgment referred to the definition of "dealer" in the Bombay Act of 1953 and referred to this court's judgment in*

State of Punjab v. Jullundur Vegetables Syndicate. We find that the majority judgment of this court relied heavily on the fact that dishonest persons may dissolve a firm in order to escape liability to assessment of taxes legitimately due from them but which have escaped assessment. In paragraph 19, the majority held :

> *"It is plausible that a distinction ought to be made between the death of an individual and the dissolution of a firm. Human beings, as assessees, are not generally known to court death to evade taxes. Death, normally, is not volitional and it is understandable that on the death of an individual, his liability to be assessed to tax should come to an end unless the statute provides to the contrary. With firms it is different, because a firm which incurs during its existence a liability to pay sales tax may, with a little ingenuity, evade its liability by the voluntary act of dissolution. The dissolution of a firm could, therefore, be viewed differently from the death of an individual and the partners could be denied the advantage of their own wrong. But we do not want to strike this new path because the Jullundur case and the two cases which follow it have likened the dissolution of a firm to the death of an individual. Let us, therefore, proceed to examine the other provisions of the 1953 Act."*
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> *It then went on to quote section 15(1) of the Bombay Sales tax Act, 1953 and then arrived at this conclusion :*

"22. Section 15(1) contains an important clause that action thereunder can be taken by the Collector after giving a notice to the assessee under section 14(3) of the Act within the prescribed period. Once such a notice is given, the Collector gets the jurisdiction to assess or reassess the amount of tax due from the dealer and all the provisions of the Act 'shall apply accordingly as if the notice were a notice served under' section 14(3). Section 14(3) speaks of the power of the Collector to assess the amount of tax due from the dealer after giving notice to him, if the Collector is not satisfied that the returns furnished are correct and complete. The jurisdiction to assess or reassess which is conferred by section 15(1) is thus equated with the original jurisdiction to assess the dealer under section 14. By this method, the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. It is no answer to a notice under section 15 that the partners having dissolved the firm, the assessment cannot be reopened. It puts a premium on one's credulity to accept that having created a special jurisdiction to assess or reassess an escaped turnover, the Legislature permitted that salutary jurisdiction to be defeated by the device of dissolution. The argument of the appellants really comes to this : suppress the turnover, evade the sales tax, dissolve the firm and earn your freedom from taxation."

The court then went on to add :

"24. Section 15A confers on the Collector analogous powers to assess or reassess a dealer for taxes due prior to November 21, 1956 when the States were reorganised, if either no assessment was made for the prior period or if any turnover had escaped assessment. This provision, like the one contained in section 15, is of general application and makes no exception in favour of dissolved firms. Therefore, if a firm was not assessed prior to the reorganisation of States or if any part of its turnover had escaped assessment, it is competent to the Collector to assess or reassess the firm notwithstanding its subsequent dissolution. This is the necessary implication of section 15A. It must follow as a corollary that the power to rectify a mistake apparent from the record can be exercised by the Collector under section 35 of the Act of 1953 even after the dissolution of an assessed firm, though on conditions specified in the section. The section contains a compelling implication that evident errors can be corrected no matter whether the firm is in existence or is dissolved. Dissolution is not a panacea for liability to pay sales tax."

It also added in paragraph 32 :

"It is indisputable that the first appellant-firm was liable to be charged to sales tax on its business turnover. The charging provisions are contained in Chapter III of the Act of 1953 and Chapter II of the Act of 1959. In

this appeal, we have to construe the machinery provisions of those Acts. In accordance with the view taken in the cases cited above, the machinery sections ought to be construed so as to effectuate the charging sections. The construction which we have placed on the machinery provisions of the 1953 Act will give meaning and content to the charging sections, in the sense that our construction will effectuate the provision contained in the charging sections. The resourcefulness and ingenuity which go into well-timed dissolution of firms ought not to be allowed to be used as convenient instruments of tax evasion. As observed by Lord Dunedin in Whitney v. Commissioners of Inland Revenue : 'A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.' Far from there being any crucial omission or a clear direction in the present case which would make the end unattainable, the various provisions to which we have drawn attention leave it in no doubt that a dissolved firm can be assessed on its pre-dissolution turnover."

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27. The argument that section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing *section 11A read with the definition of "assessee" earlier in this judgment.*

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29. The learned counsel for the Revenue also cited Girja Nandini Devi v. Bijendra Narain Choudhury (1967) 1 SCR 93 at paragraph 15 and Rameshwar Manjhi v. Management of Sangramgarh Colliery (1994) 1 SCC 292 at paragraph 12, in support of the general principle that an action begun in a court of law by a person does not cease with his death. The context of both decisions was very different. The first decision was in the context of proceedings in relation to partition of a joint family whereas the second was under the Industrial Disputes Act. Neither judgment has any direct bearing on the controversy before us.

30. It remains to consider a judgment cited by the learned counsel for the appellants, namely, CCE v. Dhiren Gandhi (2012) 281 ELT 64 (Karn). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct :

> *"We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way sections 11 and 11A are worded, it is amply clear, the Legislature has consciously kept*

> *away the legal heirs from answering to liabilities under the Act." (at page 69)*

31. The impugned judgment in the present case has referred to Ellis C. Reid but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short-levy which has been noticed during the lifetime of the deceased and then goes on to state that equally, therefore, legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is, therefore, necessary to reiterate the law as it stands. In Partington v. Attorney General [1869] LR 4 HL 100 at 122, Lord Cairns stated :

> *"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable, construction, certainly, such a*

construction is not admissible in a taxing statute where you can simply adhere to the words of the statute."

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34. We are, therefore, of the view that this appeal must be allowed and the judgment of the High Court of Kerala is, accordingly set aside and that of the learned single judge restored.

9. In the case in hand, as confirmed by counsel for the petitioner, the wife of the deceased employee has already passed away and children being major are not entitled to family pension, thus, state is not paying family pension to any family member of the deceased employee. The respondent-UOI has conceded that no recovery can be effected from legal heirs of deceased employee, however, bank is disputing on the ground that deceased employee had furnished undertaking. The undertaking, if any, furnished by deceased employee was binding upon him and in the absence of any statutory provision, it cannot create liability of legal heirs. The Supreme Court in above-cited judgments has held that even tax cannot be recovered from legal heirs of a proprietorship concern if there is no statutory provision. An employee gets pension under the statutory provisions. The right of pension has been recognised as constitutional right in terms of Article 300-A of Constitution of India. It is apt to notice that prior to omission of clause (f) of article 19(1) of the Constitution of India, it was considered as fundamental right."

13. Admittedly, Prince Kumar, husband of the appellant-plaintiff, was working as JE II with the respondent-department and he died during service on 15.01.1992. Appellant – widow of Prince Kumar, being his legal heir was entitled to gratuity, family pension etc.

However, she was paid an amount of Rs.16,048/- as gratuity after deducting Rs.58,202/- vide order dated 11.10.1993 on the ground that there was shortage of Rs.58,202/- in the account of deceased Prince Kumar. The alleged shortage of Rs.58,202/- pertains to the period from September 1981 to October, 1984. However, to the utter surprise, no notice or charge-sheet was ever issued to deceased Prince Kumar during his lifetime regarding any shortage nor any enquiry was conducted and after his death amount of Rs.58,202/- was deducted from the amount of gratuity paid to his widow, which is against the settled law that no recovery can be effected from the legal heirs of the deceased employee. More so, appellant-Satya Rani has since expired during the pendency of present appeal and vide orders dated 20.04.1999 her legal representatives were brought on record.

14. In view of the above, judgments and decrees of the Courts below being against law are not sustainable in the eyes of law. Therefore, the appeal is allowed. Judgments and decree of the Courts below are set aside and suit of the plaintiff is decreed. Decree-sheet be prepared accordingly.

15. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

31.05.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No