

Nokia India Private Limited vs Commissioner Of Trade And Taxes & Anr on 22 August, 2024

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 11892/2023 & CM APPL. 46455/2023 (interim)

NOKIA INDIA PRIVATE LIMITED

Through:

versus

COMMISSIONER OF TRADE AND TAXES

& ANR.

.....Respondent

Through: Mr. Rajeev Aggarwal, ASC
with Mr. Shubham Goel, Ms.
Shagufta H. Badhwar & Mr.
Prateek Badhwar, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 22.08.2024

1. We have heard the submissions addressed by Mr. Sawhney, learned counsel appearing for the writ petitioner, and Mr. Aggarwal, learned counsel appearing for the respondents.

2. We note that one of the issues which is raised by the respondents is based upon Section 44 of the Delhi Value Added Tax Act, 2004¹ with Mr. Aggarwal contending that their right to issue a certificate of recovery stands unimpeded by any prescription of limitation.

3. We, however, note that Section 44 uses the expression "any Act This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/08/2024 at 18:05:19 amount recoverable" and which has been considered in various judgments including those rendered by the Allahabad High Court in Sita Devi vs. Kanpur Jal Sansthan & Ors.² and Narender Kumar & Anr. vs. Collector, Bulandshahar & Ors.³, where reliance was placed on the decision of the Supreme Court in State of Kerala vs. V.R. Kalliyankutty⁴.

4. We are also informed by Mr. Aggarwal of a detailed order passed by the Supreme Court in K.P. Khemka & Anr. vs. Haryana State Industrial and Infrastructure Development Corporation Ltd. & Ors.⁵ and where a reference has been made to a larger Bench for an authoritative pronouncement. In K.P. Khemka, the question which arose was whether a right to recover by issuance of certificate would be regulated by a prescription of limitation notwithstanding the concept of a reasonable period of time which may apply.

5. We take note of some of the following pertinent observations which appear in the order of the Supreme Court dated 08 May 2024:

"13. In our view, the findings of the Division Bench in the impugned order do not directly address the holding in V.R. Kalliyankutty (supra) that the Kerala Revenue Recovery Act did not create any additional right to recover and enforce the outstanding amounts due.

14. The real question that arises is do the State Financial Corporations Act, 1951 and the Recovery of Dues Act create a distinct right and provided an alternative mechanism of enforcement to recover the amount due, even if the amounts due were time barred? To answer this question, we need to examine the relevant statutory provisions.

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18. At this point, we deem it appropriate to refer to a passage from Salmond on Jurisprudence, 12th Edition, on the concepts of "Right" and "Power" [Page 224, 229 & 230]:

"42. Legal rights in a wider sense of the term 1987 SCC OnLine All 41 2004 SCC OnLine All 1863 (1999) 3 SCC 657 2024 SCC OnLine SC 846 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/08/2024 at 18:05:19 We must now consider the wider use of the term, according to which rights, do not necessarily correspond with duties. In this generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law. Of rights in this sense there are four distinct kinds. These are (1) Rights (in the strict sense), (2) Liberties, (3) Powers, and (4) Immunities. Each of these has its correlative, namely (1) Duties, (2) No-Rights, (3) Liabilities, and (4) Disabilities.

A debt is not the same thing as a right of action for its recovery. A former is the right in the strict and proper sense, corresponding to the duty of the debtor to pay; the latter is a legal power, corresponding to the liability of the debtor to be sued. That the two are distinct appears from the fact that the right of action may be destroyed (as by prescription) while the debt remains A power may be defined as ability conferred upon a person by the law to alter, by his own will directed to that

end, the rights, duties, liabilities or other legal relations, either of himself or of other persons. Powers are either public or private. The former are those which are vested in a person as an agent or instrument of the functions of the state; they comprise the various forms of legislative, judicial, and executive authority...The correlative of power is a liability. This connotes the presence of a power vested in someone else, as against the person with the liability. It is the position of one whose legal rights (in the wide sense) may be altered by the exercise of a power...the most important form of liability is that which corresponds to the various powers of action and prosecution. Such liability is independent of the question whether the particular action or prosecution will be successful, and is therefore independent of (say) the duty to pay damages for a civil wrong"

(emphasis supplied) As would be clear from the passage above, a debt is not the same thing as the right of action for its recovery. While the debt is the right in the creditor with the correlative duty on the debtor the right of action for recovery is in the nature of a legal power. While the process of filing a civil suit may be barred because of the statute of limitation, the power to recover vested through Section 32-G of the State Financial Corporations Act read with Section 2(c) and Section 3 of the Recovery of Dues Act is a distinct power which continues notwithstanding that another mode of recovery through a civil suit is barred. Understood in that sense, it does appear that there is an additional right to enforce the claims of the financial corporations notwithstanding the bar of limitation. The same is the case with the provisions of the Kerala Revenue Recovery Act which fell for consideration of this Court in V.R. This is a digitally signed order.

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19. No doubt, even where the statute of limitation does not apply, the power has to be exercised within a reasonable time. In that scenario the further question would be : Whether the time available would analogously be the time available for execution of decrees? Since no specific arguments have been advanced and since the Division Bench in the Impugned Order was not engaged with that issue, we refrain from dealing with the same.

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22. This Court in V.R. Kalliyankutty (supra) held that the words 'amounts due' occurring in the Kerala Revenue Recovery Act would only include legally recoverable debts i.e. debts which are not time-barred. For this purpose, it may be apposite to refer to the relevant portions from the decision in V.R. Kalliyankutty (supra):

"9. In the case of Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd. [AIR 1933 PC 63 : (1932-33) 60 IA 13] the Privy Council was required to interpret the words "money due" under Section 186 of the Companies Act, 1913. Section 186 dealt

with the recovery of any money due to the company from a contributory. Interpreting the words "money due", the Privy Council said that the phrase would only refer to those claims which were not time-barred.

10. The same reasoning would apply in the present case also. The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under Section 70 of the Kerala Revenue Recovery Act, it is provided that when proceedings are taken under this Act against any person for the recovery of any sum of money due from him, such person may, at any time before the commencement of the sale of any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-section (2) of Section 70 provides that when the amount is paid under protest, the officer issuing the demand or the officer at whose instance the proceedings have been initiated, shall enquire into the protest and pass appropriate orders. If the protest is accepted, the officer disposing of the protest shall This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/08/2024 at 18:05:20 immediately order the refund of the whole or part of the money paid under protest. Under sub-section (3) of Section 70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest.

11. Therefore, under Section 70(3) a person who has paid under protest can file a suit for refund of the amount wrongly recovered. In law he would be entitled to submit in the suit that the claim against which the recovery has been made is time-barred. Hence no amount should have been recovered from him. When the right to file a suit under Section 70(3) is expressly preserved, there is a necessary implication that the shield of limitation available to a debtor in a suit is also preserved. He cannot, therefore, be deprived of this right simply by making a recovery under the said Act unless there is anything in the Act which expressly brings about such a result. Provisions of the said Act, however, indicate to the contrary. Moreover, such a wide interpretation of "amount due" which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act. It would be ironic if an Act for speedy recovery is held as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims.

12. In the case of *New Delhi Municipal Committee v. Kalu Ram* [(1976) 3 SCC 407] relying on the Privy Council decision in *Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd.* [AIR 1933 PC 63 : (1932-33) 60 IA 13] this Court interpreted Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 in a similar way. Under that section where any person is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order. While considering the meaning of the words "arrears of rent payable" this Court examined whether Section 7 creates a right to realise arrears of rent without any limitation of time. The Court observed that the word "payable" is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. In the context of recovery of arrears of rent under Section 7, this Court said that if the recovery is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent the determination must be in accordance with law. Section 7 only covers arrears not otherwise time-barred.

16. There is no question, however, in the present case of any This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/08/2024 at 18:05:20 payment voluntarily made by a debtor being adjusted by his creditor against a time-barred debt. The provisions in the present case are statutory provisions for coercive recovery of "amounts due". Although the necessity of filing a suit by a creditor is avoided, the extent of the claim which is legally recoverable is not thereby enlarged. Under Section 70(2) of the Kerala Revenue Recovery Act the right of a debtor to file a suit for refund is expressly preserved. Instead of the bank or the financial institution filing a suit which is defended by the debtor, the creditor first recovers and then defends his recovery in a suit filed by the debtor. The rights of the parties are not thereby enlarged. The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such a process of recovery would start with a written requisition issued in the prescribed form by the creditor to the Collector of the district as prescribed under Section 69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time-barred on that date can be recovered under the Kerala Revenue Recovery Act."

(emphasis supplied) XXXX XXXX XXXX

29. While it is true that the U.P Act, similar to the Haryana Revenue Recovery Act [in the present case] or the Kerala Revenue Recovery Act, was enacted with the object to have speedy recovery of dues, this does not take away from the fact that the right was vested in the Financial Corporations to recover the loans through the said Acts, notwithstanding any other right, including the right to file a suit.

30. As far as the finding in V.R. Kalliyankutty (supra) regarding Section 70(3) of the Kerala Revenue Recovery Act, which provides for a suit by the debtor for refund after payment under protest, is concerned, what is to be noted is that the defence for the State Financial Corporations that the State Financial Corporations Act conferred an additional right to recover amounts due would still be applicable. Therefore, the existence of the right to the debtor under Section 70(3) of the Kerala Revenue Recovery Act cannot be said to be determinative of the issue."

6. In view of the aforesaid, we adjourn the hearing on this writ petition awaiting the reference being answered.

7. Notwithstanding the above, we accord liberty to the writ This is a digitally signed order.

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8. Let the writ petition be called again on 08.11.2024.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 22, 2024/sk This is a digitally signed order.

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