Patna High Court
Santosh Verma vs Union Of India (Uoi) And Ors. on 27 August, 1990
Equivalent citations: 1991 189 ITR 549 Patna
Author: G Sohani
Bench: G Sohani, G Bharuka
JUDGMENT G.G. Sohani, C.J.

1. Heard Shri K.N. Jain and Shri Nand Kishore Singh, learned counsel for the petitioner, and Shri B.P. Rajgarhia, learned counsel for the respondents. At the request of learned counsel for the petitioner and for the Revenue, this petition under Article 226 of the Constitution of India is being disposed of at the admission stage.

2. The material facts giving rise to this petition, briefly, are as follows :

(i) The petitioner had deposited on February 10, 1988, a sum of Rs. 5,00,000 in the Canara Bank, Danapur Cantonment Branch, Patna (hereinafter referred to as "the bank"), and obtained a receipt for the deposit in his own name giving his address as Budha Colony, Patna. The amount was deposited for a period of six months.

(ii) In pursuance of an authorisation under Section 132(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), issued by the Deputy Director of Income-tax (Investigation), Patna, on May 16, 1988, the Assistant Director of Inspection, directed the branch manager of the bank (vide annexure 5) to debit the fixed deposit account of the petitioner and prepare a draft for the balance amount along with interest payable in P. D. Account of the Commissioner of Income-tax, Patna. The branch manager was further informed that the formalities of making seizure of account would be completed at the time of execution of the warrant. On May 19, 1988, the Assistant Director of Inspection seized the draft dated May 19, 1988, in P. D. Account of the Commissioner of Income-tax, Patna, for a sum of Rs. 5,06,874 prepared in pursuance of the aforesaid direction.

(iii) Thereafter, a notice under Rule 112A of the Rules framed under the Act was sent to the petitioner by registered post at the address given by the petitioner to the Branch Manager of the bank at the time of obtaining the receipt for deposit. A notice under Section 139(2) of the Act was also sent to the petitioner. The notices were returned with the endorsement "no trace". A notice was then affixed on the bank premises where the petitioner was last known to have entered into a transaction, calling upon him to show cause as to why the amount seized be not taken as undisclosed income. An order under Section 132(5) of the Act was passed on September 16, 1988, after obtaining approval of the Deputy Commissioner of Income-tax and as the liability of the petitioner exceeded the amount of cash seized, the said amount was retained. An order of assessment was also thereafter passed on December 29, 1988, raising a demand of Rs. 2,78,166 against the petitioner and penally proceedings were initiated against the petitioner. A penalty of Rs. 2,41,941 was thereafter imposed on the petitioner by an order dated February 3, 1989.

(iv) Respondents Nos. 7 to 10 filed a suit in the Calcutta High Court under Section 41 of the Arbitration Act and an ex parte order was passed on January 17, 1990, directing the Commissioner

of Income-tax, Patna, to make over payment of Rs. 4,36,874 to the Registrar of the High Court. The Commissioner appeared and, on February 8, 1990, the aforesaid interim order was vacated. Thereafter, the petitioner filed this petition on March 17, 1990, before this court under Article 226 of the Constitution of India praying that the demand notices issued to him in pursuance of the order of assessment and the order imposing penalty be quashed and the respondent authorities be directed to return the money seized by them from the bank along with interest.

3. The first contention advanced by learned counsel for the petitioner was that the entire proceedings relating to assessment and imposition of penalty were without jurisdiction as there was no valid service of notice on the petitioner. It was urged that the petitioner never resided or carried on business at Budha Colony, Patna, where the notices were alleged to have been sent by the respondent authorities and, therefore, the order of assessment and the order imposing penalty deserved to be quashed as being without jurisdiction. In reply, it was contended that the notices were validly served at the last known address where the petitioner was last seen and where he was again likely to come at the time of maturity of his deposit on August 9, 1989, and that, as the petitioner failed to appear before the authorities in spite of notice, the order of assessment and the order imposing penalty were passed on December 29, 1988, and February 3, 1988, respectively. It was urged that the remedy of the petitioner was to prefer an appeal from the impugned orders and the petitioner was not entitled to any relief under Article 226 of the Constitution of India.

4. During the pendency of these proceedings, the petitioner has filed an appeal as stated at the Bar. The question as to whether, in the circumstances of the case, notices can be held to have been validly served on the petitioner is a question that can be decided only after investigation of facts. Without such investigation, it cannot be held that there was no valid service and the assessment proceedings against the petitioner were without jurisdiction. As the appeal preferred by the petitioner is pending, the appellate authority will decide that question in the light of the materials that would be placed on record and I, therefore, refrain from expressing any opinion in that behalf. The order of assessment and the order imposing penalty passed against the petitioner cannot be quashed in these proceedings as prayed for.

5. It was then contended on behalf of the petitioner that the respondent authorities were not justified in directing the bank to prepare a draft in the name of the Commissioner of Income-tax by converting the fixed deposit of the petitioner. Learned counsel for the Revenue was asked to point out any provision of law under which such a direction, as contained in annexure 5, could be given to the bank. Learned counsel for the Revenue contended that the money deposited in a bank could always be seized under Section 132(3) of the Act. It is no doubt well-settled that an amount in credit with the banker is always liable to attachment. An action in that behalf can be taken under Sub-section (3) of Section 132 of the Act. That provision contemplates a prohibitory order not to deal with the monies deposited by the petitioner except with the prior permission of the authority. Such an order would have been undoubtedly justified but the bank, in my opinion, could not have been directed under Section 132(3) of the Act to convert the amount deposited by the petitioner by preparing a draft in favour of the Commissioner of Income-tax. No provision of law was brought to our notice to support this action. The direction contained in annexure "5" cannot, therefore, be sustained in law. But the question for consideration is whether, in the instant case, any relief can be

granted to the petitioner. It is clear that the petitioner gave a fictitious address to the bank where he had deposited the amount, because, even according to the petitioner, he does not reside or carry on business at that address. The notice issued to the petitioner was affixed in the bank premises and, on August 9, 1988, the date of maturity of the deposit, the petitioner would have known from the bank officials about the commencement of proceedings against him. The petitioner has not disclosed that he visited the bank any time after February 10, 1988, even though he had deposited the amount of Rs. 5,00,000 in the bank for a period of six months only. He did not appear before the respondent authorities at Patna but proceedings were instituted in the Calcutta High Court by the partners of the petitioner, as alleged by him, for recovering the amount seized by the respondent authorities. It was only after the ex parte order passed in those proceedings was vacated that the petitioner chose to file this petition. In view of this conduct of the petitioner and in view of the fact that the order of assessment and the order imposing penalty have been passed against the petitioner which create a demand against the petitioner, in excess of the amount deposited, it would not be in the interest of justice to give any direction to the respondent authorities in this petition to refund the amount seized from the bank in pursuance of annexure "5". In the circumstances of the case, therefore, no relief can be granted to the petitioner in this petition. If the order of assessment and the order imposing penalty are ultimately set aside in appropriate proceedings, the petitioner would, undoubtedly, be entitled to the refund of the amount in question with interest.

6. This petition is, accordingly, disposed of.

G.C. Bharuka, J.

7. I agree.