Supreme Court of India
Lakshman Swarup Om Prakash vs Union Of India (Uoi) And Ors. on 6 May, 1997
Equivalent citations: 1998 229 ITR 662 SC, JT 1997 (10) SC 683, (1997) 7 SCC 245
Author: S Agarwal
Bench: S Agrawal, D Wadhwa
ORDER S.C. Agarwal, J.

1. This appeal by the decree-holder is directed against the judgment of the Allahabad High Court dated 22-9-1981 in Civil Revision No.835 of 1974 filed by the Union of India against the order dated 4-3-1974 passed by the Civil and Sessions Judge, Agra in execution proceedings pending before him. The facts, in brief, are as follows :

Various persons held decrees against M/s. John Mills and Company. In proceedings for execution pf those decrees, the decree-holders, sought to attach various sums of money which were lying to the credit of the said judgment-debtors in the Court of Civil Judge, Agra in Suit No.76 of 1979. The decree-holders moved an application for rateable distribution under Section 73 of the CPC. In the present case we are concerned with such application moved by the appellant. On 28-5-1973 the Civil Judge, Agra, had sent cheques to the executing court, viz., the Civil and Sessions Judge, Agra, for payment to the decree-holders, including the appellant, after taking security from them. On 31-8-1973 Respondent 1, Union of India, moved an application under Section 226(4) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") stating that large sums of money were due as tax against the judgment-debtors and the Union of India has a priority over the claims of other creditOrs. In the said application it was asserted that the Union of India had a right to attach and realize the amounts which are lying in the Court to the credit of the judgment-debtOrs. The said application was contested by the decree-holders, including the appellant, and the Civil and Sessions Judge, Agra, by order dated 4-3-1974 dismissed the said application on the view that the money which was brought to the executing court for the satisfaction of the decree held by the decree-holders had ceased to belong to the judgment-debtors and that being so the provisions of Section 226(4) of the Act could not have any application. Feeling aggrieved by the said order of the executing court, the Union of India filed revision petition before the High Court which has been allowed by the impugned judgment dated 20-9-1989. The High Court has held that until the money was disbursed and appropriated by the decree-holders on (sic or) the creditors of the judgment-debtors in accordance with law the money held by the Court continued to be liable to be proceeded against under Section 226(4) of the Act. It was submitted on behalf of the appellant before the High Court that the income tax liabilities of the judgment-debtors were the subject-matter of a number of writ petitions and in those writ petitions by order dated 8-4-1980, the demand giving rise to such liabilities has been quashed. On behalf of Respondent 1 it was pointed out that the demand in respect of which the application under Section 226(4) had been filed consisted of not only the liabilities of income tax but also those under the Excise Profit Act. The High Court did not consider it necessary to deal with the said question and left the appellant to have the controversy determined by the executing court. The High Court has allowed the revision petition and has set aside the order dated 4-3-1974 passed by the executing court and has remanded the matter to the executing court with the direction to dispose of the application filed by the Union of India under Section 226(4) of the Act and the objections filed by the appellant thereto according to

the law. Hence this appeal.

2. Section 226(4) of the Act provides as under:

226.(4) The Assessing Officer or Tax Recovery Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

3. Under Section 226(4) of the Act the Assessing Officer or Tax Recovery Officer can move the court having custody of money belonging to the assessee for payment to him of such money for discharging the tax liability of the assessee. What is necessary is that on the date when the application is made the court should have custody of money belonging to the assessee. The question therefore, is whether on 31-8-1973 when the application under Section 226(4) was moved by Respondent 1 any money belonging to the judgment-debtors was in custody of the executing court. For that purpose it is necessary to consider Section 73 C.P.C. which provides as under:

73. Proceeds of execution sale to be rateably distributed among decree-holders-(1) Where assets are held by a court and more persons than one have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons :

Provided as follows :(omitted)

4. Under Section 73 C.P.C. the money lying in the executing court continues to belong to the judgment-debtor till it is disbursed among the decree-holders or other creditors of the judgment-debtor.

5. On 31-8-1973 the date on which the application under Section 226(4) of the Act was filed by Respondents cheques sent by the Civil Judge, Agra to the executing court were lying with the executing court. The payment was actually made to the appellant on 23-4-1974, i.e., after the passing of the order dated 4-3-1974, rejecting the application under Section 226(4) filed by respondent 1. The High Court was, therefore, right in holding that on the date of filing of the application under Section 226(4) of the Act the money had not been distributed to the appellant decree-holders and was lying with the executing court. The executing court was, therefore, in error in rejecting the application filed by the Union of India under Section 226(4) of the Act on the view that the money had ceased to be the property of the judgment-debtors on the date of the filing of the said application. The money could have Ceased to be the property of the judgment-debtors only on its being distributed among the decree-holders and till it was so distributed it continued to remain the money of the judgment-debtors in the custody of the court.

6. Shri Markandeya has placed reliance on the following observations of this Court in Union of India v. Somasundram Mills (P) Ltd.

...It is a general principle of law that debts due to the State are entitled to priority over all other debts. If a decree-holder brings a judgment-debtor's property to sale and the sale proceeds are lying in deposit in court, the State may, even without prior attachment exercise its right to priority by making an application to the executing court for payment out. If, however, the State does not choose to apply to the court for payment of its dues from the amount lying in deposit in the court but allows the amount to be taken away by some other attaching decree-holder, the State cannot thereafter make an application for payment of its dues from the sale proceeds since there is no amount left with the court to be paid to the State.

7. These observations do not lend support in the case of the appellant because in the present case it cannot be said that the Union of India had allowed the amount to be taken away by the decree-holders. Before the amount could be distributed among the decree-holders the application had been filed by Respondent 1 under Section 226(4) of the Act.

8. Shri Markandeya has urged that after the passing of the order dated 4-3-1974 by the executing court the Union of India did not take any steps to obtain stay of the payment of the amount to the appellant and the appellant had obtained the cheque from the executing court and had encashed the same on 23-4-1974 and that the bank guarantee furnished by the appellant has also been discharged on 31 -5-1974. That in our opinion has no effect on the maintainability of the application under Section 226(4) which was submitted on 31-8-1973 prior to such payment. The payment of money to the appellant after the filing of the application would not render the said application infructuous. In these circumstances, we do not find merit in this appeal. The appeal is, therefore, dismissed. No order as to costs.