

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
KAMLA DEVI AND ANR.

DATE OF JUDGMENT: 03/04/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 1733 JT 1996 (4) 128
1996 SCALE (3)403

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P.JEEVAN REDDY, J.

Leave granted. Heard the counsel for the appellant and respondents.

This appeal is preferred against the judgment and decree of the learned Civil Judge, Ghaziabad [Uttar Pradesh] dated September 11, 1991 in Suit No.451 of 1990 in rather peculiar circumstances. Smt.Kamta Devi, first respondent herein [who died pending the present appeal and whose legal representatives have come on record] was the owner of premises/building bearing Property No.416, Kucha Brijuath, Chandni Chowk, Delhi. By an order dated January 28, 1991 the Deputy Assessor and Collector determined the rental value and rateable value of the said building [comprising four floors] with effect from April 1, 1993 and also determined the property taxes payable thereon. Against the order of assessment, Kamla Devi filed an appeal before the learned District Judge, Delhi on March 8, 1991. While the appeal was pending, Kamla Devi went to Ghaziabad and filed a Suit No.451 of 1991 against (1) Municipal Corporation of Delhi and (2) the Deputy Assessor and Collector (House Tax) SC-I for a declaration that "the orders dated 28.1.91 passed by Defendant No.2 as illegal, invalid and void ab initio" and for a prohibitory injunction restraining the defendants from "attaching the plaintiff's property or taking any other action/proceedings/orders against the plaintiff or her assets in pursuant to the order dated 28. 1.1991 passed by the Deputy Assessor and Collector SC-I, MCD". The suit was filed on April 19, 1991. In the first paragraph of the plaint, Kamla Devi stated that she is resident of C-92, Inder Puri, Loni, Ghaziabad owned by her grand-children. In Para-2, she stated that on April 18, 1991 "three persons claiming to represent defendant came to the residence of the plaintiff and threatened to attach her assets that the rateable value for the purposes of fixing house tax has been

increased by Defendant NO. 2 in respect to property No. 416, Kucha Brijnaths Chandni Chowk, Delhi-6 owned by the plaintiff" and that after great persuasion and interference by local respectable persons, did the officials postpone their action for a day. Then follow a number of paragraphs. Paragraphs 3 to 16, set out the reasons and grounds for which the order of assessment dated January 28, 1991 was said to be contrary to law and illegal. In Paragraph 19 pertaining to cause of actions she stated that the cause of action for the suit arose on April 18, 1991 when the defendant sent their officials to C-92, Inder Puri, Loni, Ghaziabad to attach the properties belonging to the plaintiff and also because the defendants were persisting with their illegal acts. It is on the above pleas that the declaration and prohibitory injunction aforementioned were asked for. It is significant to note that no document was filed along with the plaint or later - showing that any attempt was made by the defendants or their officials to distrain or attach the plaintiff's movables or other properties at Ghaziabad. Among the twelve documents filed by the plaintiff, the last document is the assessment order dated January 28, 1991. No other document subsequent to that date has been filed. It is equally significant to notice that the declaration asked for is with respect to assessment order passed by the second defendant [an officer of the appellant-Corporation] relating to a house situated in Delhi. More significant is the wide language in which the prohibitory injunction was asked for. It is worded widely to restrain proceedings against any of the properties or assets of the plaintiff [situated anywhere] for recovery of the said tax. Another important fact to be noticed is that the plaintiff, while setting out in detail the reasons for which the assessment order aforesaid was said to be illegal, did not disclose in her plaint that she had already filed an appeal against the said assessment order before the appropriate authority and it was pending. Suit notices were issued to the defendants and were supposed to be served upon them. The suit was decreed on September 11, 1991.

The judgment sets out the averments in the plaint at length and then says that though served, the defendants have not filed any reply and that, therefore, the case is proceeded with ex parte. Except stating that the plaintiff has reiterated the averments in the plaint and that "the case of the plaintiff as stated deserves to be accepted in a one sided matter", no specific finding is recorded in the judgment that the officials of the appellant-Corporation did indeed seek to attach or sell the assets of the plaintiff. The suit was decreed in the following terms: "it is declared that the defendant's order dated 28.1.91 are illegal, bad and contrary to law and that the defendant and his representatives/agents are hereby restrained from auctioning the property at C-92, Inder Puri, Loni, Ghaziabad pursuant to the orders dated 28.1.91". While it is true that the prohibitory injunction is confined only to properties at Ghaziabad, yet the declaration that the order dated January 28, 1991 is illegal and contrary to law makes it unenforceable and ineffective for all purposes.

In the present appeal filed by the Municipal Corporation, it is stated that having filed an appeal against the assessment order, Kamla Devi filed a suit in Ghaziabad deliberately concealing the fact of filing of the said appeal and has obtained a decree thereby trying to hoodwink the courts below. It is then stated in Para 10 that the Corporation has sent a Dill dated July 8, 1991 to the respondent-assessee on the basis of the assessment order

dated January 28, 1991 and that it was shocked when it was apprised of an order of stay passed by a court in Uttar Pradesh. It is also stated that the Corporation has not received any suit notice from the Ghaziabad court. Since the filing of the suit in Ghaziabad court is said to be an abuse of the process of courts it is prayed that the said judgment and decree be set aside by this Court.

Ms. Madhu Tewatia, learned counsel for the appellant-Corporation, submitted that the filing of the suit by Kamla Devi was a stark abuse of process of court. She submitted that no proceedings for recovery were ever taken against her properties in Ghaziabad by the Corporation or its officials and that allegation in Para 2 of the plaint is only a pretence and a total fabrication put forward with a view to create jurisdiction in Ghaziabad court. It is submitted that property is situated in Delhi, that the assessment was made at Delhi by an authority competent in law to do so which was indeed questioned by Kamla Devi by filing an appeal which was pending before the competent authority. Filing of the said suit in the above circumstances is said to be a clear case of over-reaching the processes of law and amounts to a sharp practice. Which should be sternly put down by this Court. It is submitted that if this type of suits are allowed to be filed anywhere outside Delhi, it would be impossible for the Corporation to function effectively. She placed strong reliance upon the decision of this Court in Oil and Natural Gas Commission V. Utpal Kumar Basu (1994 (4) S.C.C. 711), delivered by a Bench comprising M.N. Venkatachaliah, C.J., A.M. Ahmadi, J. and one of us [B.P. Jeevan Reddy, J.].

On the other hand, the learned counsel for the respondents [legal representatives of Kamla Devi], submitted that when the suit summons were served upon the Corporation and the assessing officer by the Ghaziabad court, it was their duty to appear before the court and contest it by putting forward such defences as were open to them in law. Not having done that and having suffered a decree and allowed the limitation for filing the appeal to lapse, it is not open to the Corporation to approach this court directly under Article 136 of the Constitution against the judgment and decree of the Ghaziabad court. It is submitted that the only manner in which the said judgment and decree could be avoided by the Corporation was to file an appeal as provided by law. The several allegations made against the first respondent are denied and it is submitted that when the officials of the Corporation wanted to attach their movables at Ghaziabad, Kamla Devi was obliged to file the suit in Ghaziabad. Counsel also sought to argue that the order of assessment dated January 28, 1991 is contrary to law, excessive and deserves to be set aside. It is also brought to our notice that the appeal filed by Kamla Devi against the assessment order dated January 28, 1991 was dismissed for default on September 12, 1994.

The first question is whether the filing of this suit by Kamla Devi in Ghaziabad court was a proceeding taken bonafide by her or whether it was only a sharp practice designed to abuse the process of law and to take unfair advantage over the Corporation. On a consideration of the facts and circumstances of the case, we are satisfied that it was a clear case of abuse of process of court and of law. We are also satisfied that the averment made in Para 2 of the plaint to the effect that the officers of the appellant-Corporation went to Ghaziabad to attach the movables of Kamla Devi or her grand-children to realise the tax under the order dated January 28, 1991 is a total falsehood and was a mere

pretence to create jurisdiction in Ghaziabad court. Not a single document or any other scrap of paper has been filed before the Ghaziabad court in support of the said allegation. Moreover, the frame of the suit and the language and terms in which the declaration and prohibitory injunction are asked for suggest a clear attempt to over-reach the process of court. The object clearly was to obtain a declaration that the assessment order dated January 28, 1991 is illegal and invalid from a court outside Delhi. The fact that Kamla Devi [plaintiff] chose to conceal the fact of her filing the appeal against the said assessment order is also indicative of the malafides on her part. It is true that the court has limited the prohibitory injunction only to properties in Ghaziabad but it has granted a declaration that the very assessment order is void and illegal which means that it cannot be enforced even within the limits of Delhi Municipal Corporation. In the Special Leave Petition, it is stated by the Corporation that the Bill of demand pursuant to the assessment order aforesaid was sent only on July 8, 1991 to the respondent whereas the suit was filed on April 19, 1991. Once this Court is satisfied that Kamla Devi has abused the process of law and misused the legal system, the objections put forward by the respondents' counsel are of no consequence. This Court is entitled to act in such cases to prevent such abuse and misuse.

In Oil and Natural Gas Commission, this Court was dealing with a case where Engineers India Limited acting as consultants for Oil and Natural Gas Commission [O.N.G.C.] issued an advertisement in the newspapers of the country inviting tenders for a particular work to be carried out at Hazira complex in Gujarat. According to the advertisement, the tenders were to be communicated to E.I.L. at Delhi. The respondent-company [NICCO] having its registered office at Calcutta submitted a tender which was considered along with other tenders received at New Delhi and was rejected. Tender of another party was accepted. Thereupon, NICCO filed a writ petition in the Calcutta High Court praying that ONGC be restrained from awarding the contract to such other party and, if already awarded, to cancel the same. In the writ petition, an allegation was made by NICCO that it had come to know of the tender from the publication in the 'Times of India' within the jurisdiction of the Calcutta High Court, that it had submitted its tender from its registered office located within the jurisdiction of the Calcutta High Court and that further correspondence in at behalf was also done from its said registered office at Calcutta. On the said averments, it was submitted that the Calcutta High Court had jurisdiction in the matter. NICCO also asked for and obtained certain interim orders which were challenged under Article 136 of the Constitution. Before this Court, NICCO relied upon a fax message sent by O.N.G.C./E.I.L. to NICCO on its Calcutta address. It was a reply to a letter sent by NICCO. It was submitted that in view of the said communication along with other facts mentioned in the writ petition, the Calcutta High Court did have the jurisdiction to entertain the said writ petition. It was held by this Court that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court. This Court pointed out that the advertisement itself mentioned that the tenders should be submitted to E.I.L. at New Delhi, that they would be scrutinised at New Delhi and that the decision to accept or reject would also be taken at New Delhi. [The work, of course to be carried out in Gujarat]. It was further held that merely because

NICCO read the advertisement at Calcutta or that it Submitted its tender from Calcutta or that it made or that a fax message was sent to it on its Calcutta address did not constitute facts forming integral part of the cause of action. It was held that NICCO did not act bonafide in invoking the jurisdiction of the Calcutta High Court and that the filing of the writ petition was an abuse of the process of court. Accordingly, the appeal was allowed, the order of the Calcutta High Court were set aside and exemplary costs in a sum of Rs.50,000/- were imposed upon NICCO. In our opinion, the principle of the said decision clearly applies here. Indeed, the present case is more guess one. In this case, there is no mention that any demand notice or bill was sent to Kamla Devi at Ghaziabad address. We have already held that the averment in Para 2 of the plaint was a mere pretence and a total fabrication.

Accordingly, this appeal is allowed, the judgment and decree of the learned Civil Judge, Ghaziabad, Uttar Pradesh dated September 11, 1991 in 199 in Suit No.451 of 1990 is set aside. In view of there reprehensible conduct, the respondents [legal representatives of Kamla Devi, who appeared in this court as representing her estate] are directed to pay exemplary costs in a sum of Rupees fifty thousand. Such practices ought no be put down with a stern hand so that others similarly minded may desist from indulging in similar acts.

Application for bringing legal representatives of Kamla Devi on record is ordered.