

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).852 OF 2021
(Arising from SLP(C) No.11430 of 2013)

A.S. SOLANKI

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO(S).853 OF 2021
(Arising from SLP(C) No.11742 of 2013)

O R D E R

Leave granted.

These appeal(s) take exception to the judgment and order dated 20.09.2012 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition (Tax) Nos.1499 of 2005 and 1464 of 2005 respectively, whereby writ petitions filed by the appellant(s) questioning the recovery process/recovery certificate came to be rejected.

In the writ petition(s), although, the primary relief claimed was in respect of recovery certificate but, it is urged that the second prayer/relief claimed was wide enough to permit the appellant(s) to pursue the argument that no part of

financial (tax) liability of the Company can be fastened upon them much less in absence of clear finding about their acts of commission and omission, in light of exposition of the Division Bench of the same High Court in "*Meekin Transmission Ltd. vs. State of Uttar Pradesh & Ors.*" reported in (2008) SCC Online All 161, in particular, paragraph 72 of the reported decision, which reads thus :

"72. The legal position as discerned from the above is that in a case where the corporate personality has been obtained by certain individuals as a cloak or a mask to prevent tax liability or to divert the public funds or to defraud public at large or for some illegal purposes etc., to find out as to who are those beneficiaries who have proceeded to prevent such liability or to achieve an impermissible objective by taking recourse to corporate personality, the veil of the corporate personality shall be lifted so that those persons who are so identified are made responsible. However, this doctrine is not to be applied as a matter of course, in a routine manner and as a day to day affair so as to recover the dues of a company, whenever and for whatever reason they are unrecoverable, from the personal assets of the Directors. If such a course is permitted, it would lead to not only disastrous results but would also destroy completely the concept of juristic personality conferred by various statutes like the Act in the present case and would make several enactments and their effect to be redundant and illusory. Moreover, the shallowness of arguments in

favour of making Directors personally responsible can be considered from another angle. In every case the Director may not be a shareholder of the company. He may have been appointed as Director for taking advantage of his expertise in his field of vocation or profession, and for achieving goals for which the company is incorporated. Such Director is paid remuneration, if any, for the services he rendered. Otherwise he is not at all a beneficiary of the business or trade etc., as the case may be, in which the company is engaged. Such benefit would be available only to the shareholders as they would only be entitled to share the profits earned by the company in the form of dividend as decided by the Board of Directors. In such case such Director, though is an agent of the company but he is more in the nature of an officer of the company and not in the capacity of limited ownership by way of shareholding. Such a Director, in our view, unless is guilty of misfeasance, fraud or acting ultra vires, we are not able to understand as to how he can be made responsible personally for the dues of the company even if we apply the doctrine of piercing the veil. If in such a case the veil is to be lifted, the persons behind the veil, at the best, would be the promoters of the company or those who have sought to obtain corporate personality as a sham or bogus transaction. Similarly, in some of the companies the financial institutions, who advances funds as loan etc., nominate their Director/s to keep some kind of monitoring over the functions of the company so that it may not go on liquidation on account of negligent and careless function of the Board of Directors. Such Directors also, in our view, cannot be included in the category of the persons who would be responsible personally for the dues of the company."

The High Court has not adverted to this decision nor analysed the contention available to the appellant(s) in light of the settled legal position restated in the earlier judgments of the same Court, referred to in the reported judgment.

Resultantly, we deem it appropriate to relegate the parties before the High Court for reconsideration of the Writ Petition(s) afresh leaving all contentions available to both sides open to be decided on their own merits in accordance with law. We order accordingly.

We may not be understood as having expressed any opinion either way on the merits of the submissions in the present appeal(s) or the grounds urged in the remanded writ petitions.

The parties to appear before the High Court on 26th March, 2021, on which date the Court may proceed with the matter or to pass appropriate directions as may be permissible in law. Interim protection in terms of order dated 8th July, 2013 to continue till 26th March, 2021.

The appeal and pending applications are disposed of accordingly.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

....., J.
(SANJIV KHANNA)

NEW DELHI
MARCH 10, 2021.

