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C.A.No. 2928 OF 2000  
ITEM No.102 Court No.5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.2928 of 2000

ORISSA STATE FINANCIAL CORPORATION Appellant (s)

VERSUS

TRANSPORT COMMNR.-CUM-CHAIRMAN, STA & ORS. Respondent (s)  
(With office report)

Date : 04/05/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s) Mr. Anukul Ch. Pradhan, Adv.  
Mr. Abhijat Parashar Medh, Adv.

For Respondent (s)  
Mr. Radha Shyam Jena, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The Civil Appeal is disposed of in terms of the signed order.

There will be no order as to costs.

Anita

(Jasbir Singh)  
Court Master

(Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2928 of 2000

ORISSA STATE FINANCIAL CORPORATION  
...  
Appellant (s)

Versus

TRANSPORT COMMNR.-CUM-CHAIRMAN, STA & ORS.  
...  
Respondent (s)

O R D E R

This Appeal is filed against the Judgment of the Orissa High Court dated 2nd February, 2000. The 2nd Respondent has been served but has not appeared.

Briefly stated the facts are as follows:-

The Appellants had advanced some loans to the 5th Respondent who had hypothecated his truck for his payment of monies. As the monies were not repaid, on 1st March, 1996 the Appellants exercised their right under Section 29 of the State Financial Corporation Act, 1951 and took over possession of the vehicle. They then sold off the vehicle to the 2nd Respondent on 21st June, 1996. Pursuant to such sale, an agreement dated 30th March, 1996 was entered into by the Appellants with the 2nd Respondent. Possession of the vehicle was given to the 2nd Respondent.

It appears that the owner had not cleared motor vehicle tax. The 1st Respondent thus refused to issue any permit to the vehicle unless all the taxes were cleared. They issued a demand notice to the 2nd Respondent for payment of a sum of Rs. 57,243/- for the period from October, 1992 to June, 1993, October 1993 to June, 1994 and April, 1995 to March, 1998. The 2nd Respondent filed a writ petition. In that writ petition the only order passed by the High Court was that at the 1st Respondent-Corporation is free to recover as per law.

The 2nd Respondent thereafter filed a second writ petition claiming that it is the Appellants (herein) who have to pay the tax as in the agreement dated 30th March, 1996 they had given him an impression that there was no tax liability. The 2nd Respondent claimed that on the basis of that representation, he had paid a much higher amount. The High Court has been impressed by such an argument and has directed the Appellants to pay the tax.

The Agreement dated 30th March, 1996 shows that the sale is on 'as is where is basis'. The clause which has been relied upon by the 2nd Respondent reads as follows:-

"3.10 The Corporation will not be liable for statutory dues, such as M.V.taxes, road tax etc. if any against the vehicle for the period prior to or after sale. You shall also not be liable for such dues prior to the sale."

Thus, this clause also indicates that the Appellants are not to be liable for road tax. Section 12 of the Orissa Motor Vehicles Taxation Act, 1975 provides as follows:-

"12. Liability of successor to pay arrears - (1) if the tax leviable in respect of any motor vehicle remains unpaid by any person liable for payment thereof and such person before having paid the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax to the Taxing Officer.

(2) Nothing contained in this section shall be deemed to [affect] the liability of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle, for payment of the said tax."

Thus under Section 12 the liability to pay tax remains that of the previous owner or of the person to whom the vehicle is transferred. The tax may also be recovered from a person who has possession or control of the vehicle. In this case the Appellants only had possession and control of the vehicle from 1st March, 1996 to 21st June, 1996. However, we find that for that period they had given "off road intimation" to the 1st Respondent-Corporation. Thus, for this period by virtue of Section 10 of the Act, no tax is payable. The question then remains as to who has to pay the tax for the remaining period mentioned above. In our view, the High Court was absolutely wrong in directing the Appellants to pay the tax. Under law, the liability remains that of the previous owner and/or the person who has purchased the vehicle. Merely because in the agreement it had been intimated by the Appellants that the 2nd Respondent will not be liable for prior due does not discharge the statutory liability of the 2nd Respondent. We are therefore unable to sustain the High Court Order. It is accordingly set aside.

The 1st Respondent is at liberty to proceed in accordance with law and recover either from the previous owner or the 2nd Respondent or the person who is in possession of the vehicle. The Appeal stands disposed of accordingly. There will be no order as to costs.

.....J.

(S.N.Variava)

.....J.

(Dr .AR.Lakshmanan)

New Delhi,  
May 04, 2005.