

\230"

C.A.No. 36 OF 1996
ITEM No.102

Court No. 4

SECTION XI

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.36 of 1996

Manzoor Ahmad Khan (dead) by Lrs. Appellant(s)

VERSUS

Civil Judge, Rampur & Ors. Respondent(s)
(With office report)

Date : 28/08/2003 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant (s)Mr. Salman Khurshid, Sr.Adv.
Mr. Imtiaz Ahmed, Adv.
Mrs. Naghma Ahmed, Adv.
Mr. V.N. Raghupathy, Adv.

For Respondent (s)RR-Ex-parte

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

The appeal is dismissed, in terms of the signed order.

(N. Annapurna)
Court Master

(Radha R. Bhatia)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.36 OF 1996

Manzoor Ahmad Khan (dead) by Lrs. ...Appellant(s)

Versus

Civil Judge, Rampur & Ors. ...Respondent(s)

O R D E R

During the pendency of a suit for recovery of money, the plaintiff-appellant secured an attachment before judgment, of the bank account of the defendants. The suit was decreed. However, the State of U.P., through Sales Tax Department, preferred an objection to attachment based on Article 372 (1) of the Constitution and Section 73 of the Code of Civil Procedure submitting that the ground debt was entitled to priority in payment and the same would prevail over the attachment secured by the plaintiff-appellant. The learned Civil Judge, by his order dated 14.4.1980, upheld the objection preferred by the State and directed the amount equivalent to the sales tax dues to be released in favour of the State from the bank account of the defendants under attachment.

...2/-

-2-

Feeling aggrieved by the order of the trial court, the appellant filed a writ petition in the High Court. It is strange to notice a writ petition having been filed against the order of the Civil Court bypassing the alternate remedy available under the ordinary civil law. Be that as it may, the High Court dismissed the writ petition finding it devoid of any merit and upheld the order dated 14.4.1980 passed by the learned Civil Judge. Inasmuch as the appellant has been responsible for with-holding the release of the amount of sales tax dues, the High Court directed the appellant to pay interest also to the State of U.P. In the proceedings before the learned Civil Judge as also in the writ petition before the High Court, the State of U.P. through the Sales Tax Department was a party to the proceedings.

Feeling aggrieved by the order of the High Court dated 7.8.1995, a petition seeking leave to appeal under Article 136 of the Constitution was filed on 27.11.1995. The State of U.P. through the Sales Tax Department, the only party interested in contesting before this Court, has not been joined as a party. During the pendency of the proceedings in this Court, the original appellant has

...3/-

-3-

expired and his legal representatives have been brought on record. Though leave to appeal was granted and the special leave petition was converted into civil appeal and the same has been pending for about seven years by this time, but, no steps have been taken to implead the State of U.P., the only necessary party. The impugned orders cannot be altered to the advantage of the appellant without hearing the State of U.P.

Though the learned counsel for the appellant made a prayer for issuing notice to the State of U.P., we are not inclined to entertain the prayer for two reasons: firstly, it is highly belated, and secondly, even on merits, we find no cause to interfere with the impugned judgment of the High Court which is a just and correct order in our opinion.

The appeal is, therefore, dismissed.

(R.C. LAHOTI)

.....J.

.....J.

(ASHOK BHAN)

New Delhi,
August 28, 2003.