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Mcgregor & Balfour Ltd. v. *Commissioner of Income-tax, West Bengal*

Hidayatullah J.

incomes within and without taxable territories is made unnecessary by demanding that this amount by way of repayment shall be brought to tax and 'treated' as income within the previous year. The effect thus is that the sub-section charges the said amount with a liability to tax by its own force or to borrow the words of Lord Sumner, is apt to 'impose a charge'.

In our opinion, the amount received as repayment of excess profits tax must be deemed to be 'income' for the purposes of the Indian Income-tax Act and for assessment it must be treated as income of the previous year. The answer to question No. 1 given by the Calcutta High Court was thus correct.

The appeal fails, and is dismissed with costs.

Appeal dismissed.

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March 16.

ADDITIONAL COLLECTOR, BANARES

v.

MAHARAJ KISHORE KHANNA

(JAFER IMAM, A. K. SARKAR and K. SUBBA RAO, JJ.)

Execution of Decrees—Decree passed by Special Judge in U.P. —If can be executed outside U. P.—Extra-territoriality—Transfer of such decree—Collector and Additional Collector, if exercise same powers—Limitation—U. P. Encumbered Estates Act, 1934 (U. P. XXV of 1934), ss. 14(7) and 24(3)—Code of Civil Procedure, 1908 (V of 1908), s. 39—Indian Limitation Act, 1908 (IX of 1908), Art. 182.

The respondent, who owned landed properties at Banaras in Uttar Pradesh and at Purnea in Bihar, was heavily indebted and applied to the Collector, Banaras under s. 4 of the U. P. Encumbered Estates Act, 1934, for liquidation of his debts. The Collector, acting under s. 6, forwarded the application to the Special Judge, appointed under the Act who on March 21, 1940, passed after the enquiry directed by the Act three money decrees in favour of three creditors of the respondent and forwarded them to the Collector for execution. Section 14(7) of the Act provided that such decrees were to be deemed to be decrees of a civil Court

of competent jurisdiction. Section 24(3) of the Act provided that for purposes of execution against property outside U. P. such decrees were to be deemed to be in favour of the Collector. The execution of the decrees was commenced by the Additional Collector, Banaras against the respondent's properties in U. P. Thereafter, the Additional Collector applied to the Additional Civil Judge, Banaras, and on January 4, 1947, got the said decrees transferred to the Subordinate Judge, Purnea and on March 17, 1947, he applied to the Subordinate Judge for execution of the decrees by attachment and sale of the respondents properties at Purnea. The Subordinate Judge made an order directing execution to issue, but, on appeal, the High Court set aside the order on the ground that the Subordinate Judge had no jurisdiction to entertain the execution application.

Held, that the Subordinate Judge Purnea had jurisdiction to execute the decrees. By virtue of s. 14(7) of the Act a decree of the Special Judge was, within U. P., a decree for all purposes of the Code of Civil Procedure and could properly be transferred under s. 39 of the Code for execution to a Court outside U. P. No question of extra-territorial operation of the Act arose in the application of s. 14(7) to the decrees as the Purnea Court was merely applying the U. P. Act to decrees passed in U. P.

For the purposes of execution and sale the Additional Collector was to be deemed to be the Collector as he exercised the Collector's powers in this regard. As such the applications for transfer and execution of the decree were properly made by the Additional Collector.

It was the same Court which exercised the powers of the Additional Civil Judge as also those of the Special Judge. The order of transfer of the decree made by the Additional Civil Judge could be treated as having been made by the Special Judge. As such it was made by the same Court which passed the decrees and was a good order under s. 39 of the Code.

The application for execution before the Subordinate Judge, Purnea was made while execution proceedings in respect of the same decrees were pending before the Additional Collector, Banaras and was a continuation of the same. No question of limitation could arise in respect of such an application.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 298 of 1955.

Appeal from the judgment and order dated April 28, 1953, of the Patna High Court in Appeal from Original Order No. 90 of 1949, arising out of the judgment and order dated January 25, 1949, of the Sub-Judge, Purnea, in Misc. Case No. 54 of 1947.

Sir Iqbal Ahmad, S. N. Andley, J. B. Dadachanji and *Rameshwar Nath*, for the appellant.

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M. C. Setalvad, Attorney-General for India and *R. C. Prasad,* for the respondent.

1959. March 16. The Judgment of the Court was delivered by

SARKAR, J.—This appeal arises out of a proceeding in execution of an adjudication made under the provisions of the United Provinces Encumbered Estates Act, 1934 (U. P. XXV of 1934), an Act passed by the legislature of the United Provinces, now called the Uttar Pradesh. The questions that arise in this appeal largely turn on the provisions of that Act and they have therefore to be referred to.

The Act was intended to give relief to the proprietors of certain landed properties in the United Provinces. Section 4 of the Act enabled a proprietor of such landed properties to make an application in writing to the Collector of the District in which any of his lands is situate, stating the amount of his debts and asking for the application of the Act to him. Upon such an application being made, the Collector is to make an order under s. 6 forwarding it to a Special Judge appointed under the Act who, under s. 3 is any civil judicial officer appointed for a local area, to exercise the powers conferred and to perform the duties imposed, by the Act. Section 7 of the Act provides that upon the making of an order by the Collector under s. 6, subject to certain exceptions which it is not necessary to enumerate, all proceedings pending in the courts in the United Provinces in respect of a debt due by the applicant shall be stayed and all execution processes issued against him by such courts shall become null and void and no fresh process in execution shall be issued against him, nor any fresh suit or other proceeding instituted. The Special Judge after he has received the application sent to him by the Collector is required by s. 8 to call upon the applicant to submit a written statement verified in the manner of a plaint, setting out full particulars of his debts, the names and addresses of his creditors and the nature and extent of his proprietary rights in land as also of all his properties which are liable to attachment under s. 60 of

the Code of Civil Procedure. Under s. 9 the Special Judge has then to publish a notice calling upon persons having claims against the applicant to submit the same within a time specified. Section 10 states that the claimant shall give full particulars of his claim and of the applicant's properties. Section 11 provides that the Special Judge will publish a further notice specifying the properties mentioned by the applicant as belonging to him and any person wishing to make a claim to any such property has to do so within a certain period. The same section gives power to the Special Judge to decide the claims made to the properties and provides that the decision made by him is to be deemed to be a decree of a civil court of competent jurisdiction. Section 14 lays down that the Special Judge will inquire into the claims submitted by the creditors against the applicant and decide the questions in issue on the same principles as those on which a court of law would have decided them, but he has the power to reduce the interest due and to give relief to the applicant in respect of such claims under certain specified United Provinces Acts. Sub-section (7) of s. 14 provides that if upon enquiry the Special Judge finds that any amount is due to any claimant he shall pass a simple money decree for such amount together with costs and interest and "such decree shall be deemed to be a decree of a civil court of competent jurisdiction" but it shall not be executable within the United Provinces except under the provisions of the Act. The next section to be referred to is s. 19 which requires the Special Judge to send the decrees granted under s. 14(7) to the Collector for execution in accordance with the provisions of Chapter V of the Act and to inform him of the nature and extent of the property which he has found to be liable to satisfy the debts of the applicant. Then come the provisions as to execution contained in Chapter V. The sections in this Chapter provide that the Collector will himself and without being required to be moved for the purpose by any person, proceed to execute the decree against the properties of the applicant within the United Provinces by the various methods indicated, and for

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realising the value of the applicant's properties the Collector shall have all the powers of a civil court for the execution of a decree. With regard to the properties of the applicant outside the United Provinces, the Act could not provide for execution. To cover such cases it was enacted by s. 24(3) that for the purpose of execution against property outside the United Provinces the decrees passed by the Special Judge would be deemed to be decrees in favour of the Collector. These are all the provisions of the Act that need be referred to for the purposes of this case.

The facts may now be stated. The respondent was the proprietor of landed properties in the United Provinces and was entitled to claim relief under the Act. He became heavily encumbered in debts. It is not necessary to go into his financial embarrassment in great detail and it will be enough to say that in 1926 and 1927 he had created several mortgages on his properties in favour of the Allahabad Bank, the Banares Bank and a person called Kalia, for very large sums. In 1929, the Banares Bank filed a suit against the respondent in the Court of the Additional Sub-Judge, Banares, in the United Provinces for enforcement of its mortgage making the other creditors of the respondent named above parties to the suit. A decree was passed in that suit giving the creditors priority in a certain order. The Allahabad Bank not being satisfied with that order of priority, filed an appeal in the High Court at Allahabad which was decided in its favour. While the appeal was pending, the respondent applied to the Collector of Banares for relief under the Act. The procedure laid down in the Act as earlier summarised was duly followed and on March 21, 1940, the Special Judge of Banares to whom the application had been forwarded by the Collector, passed three money decrees in favour of the three creditors of the respondent mentioned above in a certain order of priority with which we shall not be concerned in this case. The total amount of such decrees came nearly to rupees nine lacs. He then sent the decrees to the Collector of Banares for execution as required by the Act. The execution of the decrees

was thereafter commenced by the Additional Collector, Banares under the provisions of the Act against the properties in the United Provinces.

The respondent owns an estate in the district of Purnea in Bihar, called the Semapur estate. Under s. 24(3) of the Act earlier mentioned, the decrees passed by the Special Judge are to be deemed to be decrees in favour of the Collector for the purpose of execution against the Semapur estate. The Additional Collector, Banares, applied to the Additional Civil Judge, Banares, for transmission of the said decrees to the Court of the Subordinate Judge, Purnea for execution and an order for transmission of the decrees to the Court at Purnea was accordingly made by that Judge on January 4, 1947. Thereafter on March 17, 1947, the Additional Collector, Banares, applied to the Subordinate Judge, Purnea, as the transferee Court to execute the decrees by attachment and sale of the Semapur estate. The Subordinate Judge thereupon made an order directing execution to issue as sought. The respondent preferred an appeal to the High Court at Patna from this order of the Subordinate Judge, Purnea and his appeal was allowed with the result that the execution of the decrees against the Semapur estate failed. The present appeal is by the Additional Collector, Banares against the order of the High Court.

The first question that arises in this appeal is whether the Subordinate Judge, Purnea, had jurisdiction to order execution of the decree transferred to him. The High Court held that he did not have that jurisdiction. The matter was put in this way. The decree was not a decree under the Code of Civil Procedure. It was only to be deemed as such because of s. 14(7) of the Act. The Act was an Act of the United Provinces legislature which could not pass a legislation having effect outside the United Provinces. The operation of s. 14(7) of the Act had therefore to be confined within the borders of the United Provinces. The Subordinate Judge, Purnea could not apply that section in Bihar and treat the decree as a decree

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under the Code. If he could not do so he could not order execution of the decree. If he were permitted so to apply the Act, then an Act of the legislature of the United Provinces would be indirectly affecting property outside the United Provinces which it could not directly do. The Act could be applied in Bihar only by giving it an extra-territorial operation. This the law did not allow. So the decree could not be executed in Purnea.

We think that this argument is fallacious. No question of any extra-territorial application of the United Provinces Act, either directly or indirectly, arises in this case. It is clear that by virtue of s. 14(7) of the Act, a decree of the Special Judge under the Act is within the United Provinces, a decree for all purposes of the Code. It could therefore be transferred decree under s. 39 of the Code of Civil Procedure to a court outside the United Provinces, for execution. Now when a decree is transferred, it is the duty of the transferee court to execute it by all methods provided by the Code of Civil Procedure. But it is said that the transferee court must be satisfied that it is a decree under the Code of Civil Procedure before it can order execution under that Code. How then is the transferee court to decide that? It has before it a decree passed not by itself but by another court. It has therefore to satisfy itself that the decree was one which, for that court, was a decree passed under the Code. In order to do that it is asked to apply the United Provinces Act to the decree passed within the United Provinces. How can it be said that if it so applies the United Provinces Act it is giving it an extra-territorial operation? It is doing nothing of the kind. It is applying an Act of the United Provinces to something which happened within the territories of those Provinces; it is applying an United Provinces Act to a matter within the competence of the legislature of the United Provinces to legislate upon. No doubt a court outside the United Provinces is applying a statute of those Provinces, but that does not amount to giving extra-territorial operation to that statute. If the statute is being so applied

to one of its legitimate objects, it is not being given any extra-territorial operation at all.

We further find it difficult to appreciate how the application by the Subordinate Judge of Purnea of the United Provinces Act to the decree of the Special Judge, Banares, sent to him for execution, results in the United Provinces Act affecting property outside the United Provinces. The only result of such application is to remove the objection that that decree is not a decree of a court in the United Provinces passed under the Code; the Act is not thereby made to affect property outside the United Provinces. Of course, if that decree is a decree under the Code it can be executed against any property outside the United Provinces. That however is not the result of the United Provinces Act but of the Code of Civil Procedure which is a central legislation and applies to Bihar also. The High Court was therefore wrong in thinking that the Subordinate Judge, Purnea, had no jurisdiction to execute the decree passed under the Act within the United Provinces and sent to him for execution.

It was then contended that the order of transfer of the decree was invalid because under s. 39 of the Code such an order could be made only on the application of the decree-holder and in the present case it had not been made on his application. His point was this. Under s. 24(3) of the Act, a decree of the Special Judge is to be deemed to be a decree in favour of the Collector for the purpose of execution against property outside the United Provinces. Therefore, in the present case it was the Collector, Banares, who was the decree-holder and he alone could apply for the transfer of the decree. Actually however the order for the transfer had been made in this case on the application of the Additional Collector, Banares. So it was said the order was invalid. Now this argument depends upon the Collector and the Additional Collector being different persons. It is clear however that they are not. That appears from ss. 14 and 14A of the United Provinces Land Revenue Act, 1901, to which our attention was drawn. Section 14 gives power to the Government to appoint a Collector for discharging the

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duties mentioned in the Act or any other law for the time being in force. Section 14A(1) gives power to the Government to appoint an Additional Collector. Sub-section (3) of s. 14A provides that the "Additional Collector shall exercise such powers and perform such duties of a Collector" as the Government may direct. The Additional Collector therefore exercises such of the powers and discharges such of the functions of the Collector, as the Government directs him to do. We have before us a document containing such an order by which the work of sale and execution which under the Encumbered Estates Act had to be done by a Collector, had been entrusted to the Additional Collector. It follows that for the purposes of execution and sale under the Act, the Additional Collector is to be deemed to be the Collector as he exercises the latter's powers in this regard. The Additional Collector was hence quite competent to apply for the transfer of the decree.

The third point against the validity of the order of the learned Subordinate Judge was that under s. 39 of the Code the decree could be transferred only by the Court which passed it. It was said that in the present case it is only by virtue of s. 14 of the Act that the decision of the Special Judge is deemed to be a decree; that since it was his decision, he must be deemed to have passed it. It was then pointed out that the order for the transfer of the decree had in fact been made by the Additional Civil Judge, Banares, and not by the Special Judge, Banares, and hence that order was of no effect. This is an argument with which we are not much impressed. It has been pointed out to us that the powers of a special Judge under the Act were conferred on the Court of the Additional Subordinate Judge, Banares, by the United Provinces Government's Revenue Department notification No. 767-Rev. published in the United Provinces Gazette of the 12th October, 1935. The Additional Subordinate Judge later came to be called the Additional Civil Judge. It is therefore the same court which exercises the powers of an Additional Civil Judge as also those of a Special Judge under the Act. We find

no difficulty in treating the order of transfer as having been made by the Special Judge. The fact that the order purported to be made by the Additional Civil Judge was a matter of mere irregularity and cannot make it invalid. Nor do we find any lack of power in the Special Judge to order a transfer of the decrees. The Act provides that his adjudication would be treated as a decree of a civil court of competent jurisdiction. The execution of such a decree outside the United Provinces is also clearly contemplated by s. 24(3). We have earlier held that such execution is permissible in law. That being so, in order to give effect to the provisions of the Act it has to be held that the Special Judge must be deemed to be a court which passed the decree within the meaning of s. 39 of the Code of Civil Procedure. Nor does there seem to be any objection to think that the Special Judge is a civil court. From the provisions of the Act earlier set out there is no doubt that he adjudicates upon rights of the parties and acts in the same way as any other civil court would do. Indeed, apart from the fact that the proceedings before him do not commence by the filing of a plaint, we find no distinction between him and a court as ordinarily understood. The order of transfer of the decree is hence, in our view, clearly a good order.

Lastly, it was said that the decree was barred by limitation long before the order for its transfer was made. It was contended that art. 182 of the Limitation Act governed the case, and the application for its execution had been made beyond the time limited. The question is, does the article apply? The High Court held that that article had no application to the present case and that no question of limitation arose "for the execution proceeding in Purnea Court is merely a continuation of the execution proceeding pending before the Collector of Banares". In our opinion, the High Court was right in the view that it took. It is quite clear that if the application for execution with which we are concerned was made in a pending execution proceeding, no question of the application of art. 182 arises. It has long been

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recognised by the courts in our country that a right to continue a proceeding which is pending is a right which arises from day to day and no question of any bar of limitation with regard to the enforcement of such a right arises: See *Kedar Nath Dutt* v. *Harra Chand Dutt* (1); *Subba Chariar* v. *Muthuveeran Pillai* (2).

The question then is, was the application for execution which has resulted in the order under appeal, one for continuing a pending execution proceeding? It is not disputed that all along since the decree was sent by the Special Judge to the Collector for execution—and before that date the decree was not executable—it has continuously been in execution under the provisions of the Act by the Additional Collector, Banares, and that such execution proceeding was pending on the date of the present application for execution. The question thus is, whether the execution proceeding started in the Court of the Subordinate Judge, Purnea, was a continuation of the execution proceeding by the Additional Collector, Banares. We think it was. We have to remember that s. 14(7) of the Act which said that an adjudication of the Special Judge was to be deemed to be a decree also provided that that decree would not be executable within the United Provinces except under the provisions of the Act. We have also to remember that the Act provided that as against the properties within the United Provinces the decree could only be executed by the Collector on his own by the various methods provided. We may also point out that s. 24(4) provides that for the purpose of such execution the Collector is to have all the powers of a civil court for the execution of a decree. It is therefore clear that the only mode of execution of the decree within the United Provinces contemplated by the Act is the execution by the Collector. Within the United Provinces the execution of the decree by the Collector would be deemed to be an execution under the Civil Procedure Code. The execution by the Collector is execution of what is a decree within the Code. When the decree is executed outside the United Provinces, where, as already stated, it can be legally

(1) (1882) I.L.R. 8 Cal. 420. (2) (1912) I.L.R. 36 Mad. 553.

executed, the amount realised by the execution by the Collector has to be taken into account. When the Subordinate Judge, Purnea, has to decide the question whether the application for execution made to him is in continuance of an existing execution proceeding, he has to recognise the proceeding before the Additional Collector, Banares, as a proceeding in execution under the Code for it is so under the Act. In doing this, for the reasons earlier mentioned, he would not be giving any extra-territorial operation to the Act. It seems to us therefore that the execution of the decree by the Collector must be deemed to be execution of a decree for all purposes and therefore an application made to the Subordinate Judge, Purnea, for execution of the same decree while an execution proceeding was pending before the Collector, must be a continuation of the execution last mentioned. No question of limitation can arise in regard to such an application.

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We think therefore that this appeal must succeed. We set aside the order of the High Court and restore the order of the Subordinate Judge, Purnea. The respondent will pay the costs of the appellant in this Court and in the High Court.

Appeal allowed.

THE COMMISSIONER OF INCOME-TAX, HYDERABAD-DECCAN
v.
MESSRS. VAZIR SULTAN & SONS

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March 20.

(N. H. BHAGWATI, B. P. SINHA and J. L. KAPUR, JJ.)

Income Tax—Capital or income—Compensation for termination of agency—Agency terminable at will—Partial termination of agency—Sterilisation of asset or loss of profit—Indian Income-tax Act, 1922 (XI of 1922).

In 1931 the respondent, a registered firm, was appointed the sole selling agents and distributors for the Hyderabad State of