

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1657 OF 1998**

Rajesh T. Shah and others ...Petitioners

**Versus**

The Tax Recovery Officer City - II  
Mumbai and others ...Respondents

Mr. Sharan Jagtiani, Senior Counsel a/w. Ms. Jyoti Mistri i/b.  
S.K. Srivastav and Co. Advocate for the Petitioners.  
Mr. Suresh Kumar, Advocate for the Respondents.

**CORAM : UJJAL BHUYAN, &  
MILIND N. JADHAV, JJ.**

**RESERVED ON : 06<sup>th</sup> February 2020.  
PRONOUNCED ON : 13<sup>th</sup> March 2020.**

**JUDGMENT (PER MILIND N. JADHAV, J.) :-**

1. By this petition under Article 226 of the Constitution of India, petitioners have challenged the following :-

*“(i) order dated 15<sup>th</sup> December, 1993 issued under Section 179 (1) of the Income Tax Act, 1961, (the Act);*

*(ii) demand notice dated 20<sup>th</sup> January, 1994; and*

*(iii) three orders of attachment dated 27<sup>th</sup> August, 1997 and seven garnishee notices issues under Section 226 (e) of the Act.”*

2. The original petitioners namely Harish R. Laliwala, Suresh Kantilal Chokshi, Rajesh T. Shah and Devila H. Laliwala who were trustees of Ramniklal C. Laliwala Famiy Benefit Trust (hereinafter referred to as ‘the trust’) have filed this Petition on behalf of the trust for the above reliefs. The trust was settled by one Smt. Sushila R. Laliwala, wife of Ramniklal C. Laliwala under a deed of trust dated 14<sup>th</sup> April 1978 for the benefit of her grand children. Originally, as per the trust deed the following four trustees were appointed viz.;

- (i) Sushila R. Laliwala
- (ii) Harish R. Laliwala
- (iii) Suresh Kantilal Chokshi
- (iv) Jyotsna Praful Laliwala

2.1. Thereafter, the constitution of the trustees was changed and at the time of filing of the Petition the trustees were :

- (i) Harish R. Laliwala
- (ii) Suresh Kantilal Chokshi
- (iii) Rajesh T. Shah
- (iv) Devila H. Laliwala

3. During the pendency of this petition Harish R. Laliwala and Suresh Kantilal Chokshi passed away and their names were deleted. The third trustee viz; Amita Apurva Laliwala who was added as trustee was impleaded as petitioner No.3 in the Petition.

4. This Court after hearing the matter for some time on 27<sup>th</sup> October 2014 passed the following order :-

*“This Petition under Article 226 of the Constitution of India, challenges:-*

*(i) order dated 15<sup>th</sup> December 1993 issued under Section 179 (1) of the Income Tax Act, 1961 (the Act);*

*(ii) demand notice dated 20<sup>th</sup> January, 1994; and*

*(iii) three orders of attachment dated 27<sup>th</sup> August, 1997 and seven garnishee notices issues under Section 226 (e) of the Act.*

*2. This Petition was heard for sometime. We were not inclined to set aside the order dated 15<sup>th</sup> December 1993 passed under Section 179 (1) of the Act.*

*3. The controversy then remaining in the present Petition is whether the Revenue is entitled to attach the properties belonging to a Private Trust to recover dues of the trustees, who was a director of a Company which had allegedly defaulted in paying its tax dues. The contention of the Revenue appears to be that the property being attached does not belong to the Trust but is a property of one late Mrs. Sushila Laliwala- the mother of the defaulting trustee. Therefore, the properties could be attached to the extent it devolved upon the ex-director of the defaulting company as her legal heir.*

*4. At this stage, we were informed that the Will of late Mrs. Sushila Laliwala was the subject matter of contest in Testamentary Suit No.38 of 1999 in Testamentary Petition No.721 of 1998. By an order dated 6<sup>th</sup> April, 2011, this Court had*

*directed the Registry to process the Testamentary Petition No.721 of 1998 and grant probate to the Plaintiff i.e. the defaulting director and trustee in this case. However, we were fairly informed by Mr. Jagtiani, that the Registry has not yet granted the probate as there is an outstanding caveat pending in the Court Registry.*

5. *The decision in this Petition would, inter alia, depend upon whether or not, the probate has been granted to the Will of late Mrs. Sushila Laliwala. This is so as if the probate is granted then the attached property would certainly belong to the Trust. However, in case, the probate is not granted, then the attached property to the extent of the share devolving upon the defaulting trustee on intestate succession could be a subject of recovery of tax dues.*

6. *In view of the above, the Petition is being adjourned by a period of four weeks, to enable the Petitioner to obtain some clarity in respect of the grant of probate to the Will of late Mrs. Sushila Laliwala. While adjourning the matter, it is made clear that Mr. Jagtiani, learned Counsel appearing for the Petitioner does not rest his case merely on the grant of probate but seeks to make legal submission which would entail*

*quashing of the attachment proceedings and garnishee notices.*

*7. Accordingly, stand over to 1<sup>st</sup> December, 2014.”*

5. At the outset, Mr. Jagtiani learned senior counsel appearing on behalf of the petitioners submitted that, at the time of passing of the above order dated 27<sup>th</sup> October 2014, the Will of late Smt. Sushila R. Laliwala was not probated as there was an outstanding caveat pending in the Court Registry. However, subsequently on 31<sup>st</sup> January 2017 this Court was pleased to issue Letters of Administration with the Will annexed to the property and credits of the deceased Smt. Shushila R. Laliwala. He submitted that a true copy of the Letters of Administration with the Will annexed thereto has been placed on record by affidavit dated 13<sup>th</sup> February 2017. He submitted that the subject properties described in paragraph No.3.15 of the petition in respect of which separate attachment orders dated 27<sup>th</sup> August 1997 had been issued on the premise that the said properties belonged to petitioner No.1 in his individual capacity, has now been put to rest by virtue of the grant of Letters of Administration to the

trust. He submitted that the subject properties which had been attached do not belong to the original petitioner No.1 Harish R. Laliwala in his individual capacity and in fact and law juridically belong to the trust. He submitted that, the observations made by this Court in paragraph Nos.4 and 5 of the order dated 27<sup>th</sup> August 2014 have been complied with and accordingly sought the reliefs claimed in the Petition.

6. Mr. Jagtiani also fairly submitted that in view of the observations recorded in paragraph No.2 of the above order, he would not press the challenge to the order dated 15<sup>th</sup> December 1993 passed under Section 179 (1) of the Income Tax Act, 1961 (hereinafter briefly referred to as the "Act") against the original petitioner No.1. He submitted that, he had instructions from the petitioners to not press for any consequential action of recovery of the garnishee amounts received by the Income Tax Department pursuant garnishee proceedings in respect of the subject properties. Mr. Jagtiani has therefore restricted his reliefs only in respect of the subject properties for setting aside the attachment and the garnishee notices on the primary ground that the said

properties belong to the trust and do not belong to the original petitioner No.1.

7. At this stage, we would like to advert to the brief facts of the case :-

(i) Smt. Sushila R. Laliwala during her lifetime settled a private trust namely Ramniklal C. Laliwala Family Benefit Trust (already referred to as "the trust" herein before) under a trust deed dated 10<sup>th</sup> April 1978 for the benefit of her grand children. She had four sons, one daughter and eleven grand children. She owned three properties apart from her other properties viz (a) Sushila Sadan Building at Khar (West), (b) a residential Flat, 5<sup>th</sup> Floor, 25/26, Girichaya, Band Stand Chowpaty, Mumbai 400 006 and (c) tenanted premise being a shop at Kothari Mansion, Parikh Street, Mumbai 400 004.

(ii) By Will deed dated 05<sup>th</sup> March 1985 Smt. Sushila R. Laliwala bequeathed all her properties in favour of the trust and appointed the original petitioner No.1 namely Harish R. Laliwala as the executor thereof.

(iii) Smt. Sushila R. Laliwala expired on 26<sup>th</sup> August

1991.

(iv) The original petitioner No.1, Harish R. Laliwala in the year 1986 joined M/s. Verma Extrusions Pvt. Ltd. (assessee company) as Managing Director and resigned from the company in the year 1993.

(v) In 1990 the Income Tax Department carried out a survey action in the case of the above assessee company, recorded the statement of the original petitioner No.1 Harish R. Laliwala on 31<sup>st</sup> March 1990 and passed order dated 10<sup>th</sup> August 1992 for the assessment year 1988 - 1989 determining an income of Rs.1,06,30,449/-. In appeal before the Commissioner of Income Tax (Appeals), the income was re-determined only after carrying forward and setting off loss of income. However for the assessment year 1989 - 1990 income was determined at Rs.3,63,97,719/- and after rectification the income was reduced to Rs.18,86,848/-. For the assessment year 1990 - 1991 income was determined at Rs.1,84,01,500/- which was ultimately reduced to Rs.1,51,51,500/- by the Commissioner of Income Tax (Appeals). Thus, for the aforesaid three years the total

liability of the original petitioner No.1 being the Managing Director of the assessee company was quantified at Rs.1,78,00,750/- by the Revenue.

(vi) Respondent No.1 thereafter by order dated 15<sup>th</sup> December 1993 issued under Section 179 (1) of the Act held the original petitioner No.1 Harish R. Laliwala jointly and severally liable for payment of arrears of tax of Rs.1,78,00,750/- in the case M/s. Verma Extrusions Pvt. Ltd. of which he was the Managing Director.

(vii) For realisation of the above liability, by separate attachment orders dated 27<sup>th</sup> August 1997, respondent No.1 attached the three subject properties belonging to the trust on the premise that the said three properties belonged to the original petitioner No.1 in his individual capacity.

(viii) The three properties as described in the attachment orders are as under :

- (a) Building 'Sushilaben', Road No.4, Khar (West).
- (b) Flat at 'Girichhaya', 5<sup>th</sup> Floor, Band Stand, Chowpati, Mumbai - 400 - 006.
- (c) Shop at Kothari Mansion, Ground Floor, Opp.

Girgaon Court, Parekh Street, Mumbai - 400 - 004.

(ix) Respondent No.1 also issued six garnishee notices under Section 226 (3) of the Act to respondent Nos.5 to 10 who were the tenants in the building 'Sushila Sadan' at Khar. The seventh garnishee notice was issued to the occupant of the shop at Kothari Mansion.

8. Mr. Jagtiani submitted that the three properties which were attached by respondent No.1 by virtue of orders dated 27<sup>th</sup> August 1997 were properties belonging to Smt. Sushilaben R. Laliwala and on her death have been inherited by the trust under her Will dated 05<sup>th</sup> March 1985. He submitted that the Will has been probated and the trust has received the Letters of Administration which have been placed on record. He submitted that the subject properties have been used for the benefit of the beneficiaries who are grand children of Smt. Sushilaben R. Laliwala. He submitted that the subject properties did not stand in the name of original petitioner No.1 and thus he did not any right or

interest in the said properties save and except that during his lifetime original petitioner No.1 was the managing trustee of the trust.

9. We have perused the pleadings with the help of the learned counsel appearing for the respective parties and the orders passed by this Court. We have also perused the private trust deed of the trust which is placed on record, the Will deed dated 05<sup>th</sup> March 1985 of Smt. Sushila R. Laliwala and the true copy of the Letters of Administration issued by this Court in respect of Testamentary Suit No.38 of 1999 in Testamentary Petition No.721 of 1998 to the trustees of the trust. From a conjoint reading of the aforesaid documents, we are of the view that the the subject properties namely (a) Building 'Sushilaben', Road No.4, Khar (West), (b) Flat at 'Girichhaya', 5<sup>th</sup> Floor, Band Stand, Chowpati, Mumbai - 400 - 006 and (c) Shop at Kothari Mansion, Ground Floor, Opp. Girgaon Court, Parekh Street, Mumbai - 400 - 004 do not belong to the original petitioner No.1 Harish R. Laliwala in his individual capacity. If that be the position then the impugned attachment orders in respect of the subject properties issued

by respondent No.1 for realisation of the liability of the original petitioner No.1 either in his individual capacity or as Managing Director of M/s. Verma Extrusions Pvt. Ltd. (asseesee company) would be untenable in law and fact.

10. Mr. Suresh Kumar appearing on behalf of the Revenue also fairly submits that pursuant to issuance of the Letters of Administration by this Court to the trustees of the trust, the above position is settled in law that the subject properties stand in the name of the trust and do not belong to the original petitioner No.1 against whom the Revenue has initiated recovery proceedings. He however submitted that the recovery proceedings being civil in nature would however continue against the original petitioner No.1 and his estate in the hands of his legal-heirs and representatives. But in so far subject properties are concerned, he has fairly accepted the position that continuance of the attachment orders would now not be sustainable in law in view of the Letters of Administration issued to the trust.

11. We have also perused the order dated 19<sup>th</sup> January 1998 passed by this Court in Notice of Motion No.22 of 1996 in Execution Application No.205 of 1995 in Suit No.1695 of 1976 filed by United Commercial Bank Vs. M/s. Jai Hind Plastic and Rubber Industries and ors. This order came to be passed in an application made by the trust in respect of challenge to the attachment carried out by the plaintiff - Bank on one of the subject property, namely, Flat No.25, Giri Chhaya, Chowpati, Band Stand, Mumbai - 400 006. The issue before the Court was that ex-parte decree was passed against the defendant M/s. Jai Hind Plastic and Rubber Industries for recovery of money and enforcement of securities which was in the nature of movables. The plaintiff - Bank in execution of the said ex-parte decree sought attachment of the aforementioned flat on the ground that the said flat belonged to the borrowers i.e. defendants M/s. Jai Hind Plastic and Rubber Industries and another in their individual capacity. This Court recorded the following findings which is thought necessary to be reproduced herein :-

*“In the present case, the short point which arises for determination by this Court is what is*

*the right, title and interest of the judgment debtor in the residential flat as on the date of the Order of attachment which was levied on 1<sup>st</sup> June 1996. In the present matter, it is not in dispute that the above residential flat was not treated as a security in favour of the Bank. It was not a part of the suit property. Taking into account the above facts and circumstances of the case as and when the flat stood attached on 1<sup>st</sup> June 1996, the flat did not stand in the name of any of the borrowers. Even if this Court was to accept the contention advanced on behalf of the plaintiff-Bank that the Trust was subterfuge created by Sushilaben in order to defeat the rights of the plaintiff-Bank, even then the property stood in the name of Sushilaben as she was the owner in respect of the residential flat. Prima facie, the Trust existed prior to the attachment.”*

11.1. This Court by the said order allowed the application filed by the trust and set aside the attachment of the said flat which belonged to the trust.

12. In view of the above, it is evident that the subject properties belong to the trust which was settled by Smt. Sushila R. Laliwala's Will before initiation of recovery

proceedings by the Revenue against the original petitioner No.1. The said properties did not belong to the original petitioner No. 1 or his legal heirs / representatives. The trust being formed in the year 1978 and the Will of Smt. Sushila R. Laliwala made in 1985 much before initiation of recovery proceedings, there is no question of the said properties being diverted to the trust to evade payment of due tax.

13. That being the position, we set aside and quash the attachment orders dated 27<sup>th</sup> August 1997 being exhibits 'O-1', 'O-2' and 'O-3' in respect of the subject properties. The demand notice dated 20<sup>th</sup> January 1994 being exhibit 'L' and six garnishee notices issued under Section 226 (3) of the Act being exhibits 'R-1' to 'R-6' to the Petition would also stand interfered with.

14. However, Revenue is free to pursue proceedings against the estate of original petitioner No.1 in the hands of his legal-heirs and representatives in accordance with law in so far as the order dated 15<sup>th</sup> December 1993 under Section 179 (1) of the Act is concerned.

15. Writ Petition is accordingly allowed in the aforesaid terms with no order as to costs.

**(MILIND N. JADHAV, J.)**

**(UJJAL BHUYAN, J.)**