1921.

ABDUL HUSSEIN v. D. J. MISTRI & Co.

sufficiently punished by having to pay his costs of this summons, which will otherwise be discharged. The moneys can be repaid by the Prothonotary.

I think the proper order is that each party do pay his own costs.

Solicitors for the surety: Messrs. *Little & Co.*

Solicitors for the defendant: Messrs. *Amin & Desai.*

Summons discharged.

G. G. N.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

IN RE PANALAL GANESHDAS, a Firm, AND IN RE INDIAN INCOME TAX ACT (VII OF 1918)*.

1921. *September* 26.

Indian Income Tax Act (VII of 1918), section 51—Reference to High Court—Whether permissible after disposal of the case by the Chief Revenue-authority.

An application by the assessee to the Chief Revenue-authority to refer a question to the High Court under section 51 of the Indian Income Tax Act must be made in the course of assessment, before the case is disposed of.

MOTION on a petition under section 45 of the Specific Relief Act.

The petitioners who carried on business in Bombay as bankers, merchants and commission agents, were called upon by the Collector of Income Tax to make a return of income under the Excess Profits Duty Act of 1919. On the 24th June 1919, they submitted their return of income.

Thereupon, the Collector of Income Tax issued a notice of demand assessing the petitioners with Excess

* O. C. J. Petition under section 45 of the Specific Relief Act.

1921.

PANALAL GANESHDAS *In re.*

Profits Duty in the sum of Rs. 10,222-8-0. On 21st July 1920, the petitioners preferred an appeal to the Chief Revenue-Authority against assessment and expressed their desire to be assessed under section 6 (*b*) (*I*) of the said Act.

On 10th August 1920, the Chief Revenue-authority directed the petitioners to call at the office of the Commissioner of Income Tax. Accordingly the petitioners saw the Commissioner and placed their submissions before him. The Commissioner of Income Tax did not accept the contentions of the petitioners and referred the matter to the Chief Revenue-authority which, however, enhanced the Excess Profits Duty from Rs. 10,222-8-0 to Rs. 12,426-8-0. On 13th December 1920, the petitioners called upon the Chief Revenue-authority to re-consider the case or to refer the matter to the High Court. The Chief Revenue-authority by his reply dated 6th January 1921 refused to refer the matter to the High Court on the ground that the petitioner had not made an application for reference before the appeal was decided, as required by rule 31 (1) of the Excess Profits Duty Rules.

In their petition to the High Court, the petitioners submitted that as a substantial question of law was involved in the decision of the Chief Revenue-authority, the latter was bound to refer the same to the High Court. The petitioners accordingly prayed (*a*) that the Chief Revenue-authority be ordered by the Court under section 45 of the Specific Relief Act to refer the said question together with an opinion thereon for the decision of the High Court, (*b*) that, in the alternative, the Chief Revenue-authority be ordered to hear and determine according to law the petitioners' application to refer the said question to the High Court.

1921.

PANALAL GANESHDAS *In re.*

A rule *nisi* was obtained by the petitioners against the Chief Revenue-authority to show cause why an order as prayed for in clauses (*a*) and (*b*) of the petition should not be made against the Chief Revenue-authority.

The rule came on for hearing before Macleod C. J. and Shah J.

Coltman, for the petitioners.

Bahadurji, acting Advocate-General, for the Chief Revenue-authority.

MACLEOD, C. J.:—This was a rule granted to the petitioners, the firm of Panalal Ganeshdas, calling upon the Chief Revenue-authority, Bombay, to appear and shew cause why he should not refer a certain question mentioned in the petition to the High Court with his opinion.

The Advocate General has taken a preliminary point that the request to the Chief Revenue-authority to refer the question at issue for the opinion of the High Court was made long after the assessment had been made, and therefore it does not come within the provisions of section 51 of the Indian Income Tax Act. That, we think, is a perfectly good point. It is clearly intended by section 51 that the application of the assessee to refer a question must be made in the course of the assessment, before the case is disposed of. Sub-section (3) says that the High Court should send to the Revenue-authority a copy of its judgment deciding the question raised, and then the Revenue-authority should dispose of the case accordingly, or, if the case arose on reference from any Revenue Officer subordinate to it, should forward a copy of such judgment to such officer who shall dispose of the case conformably to such judgment.

1921.

PANALAL GANESHDAS *In re.*

Clearly, then, the application must be made before the case is disposed of, and it cannot be left to the assessee, once the assessment is made and the case is disposed of, to fix his own time for making an application to the Chief Revenue-authority to refer a question under section 51.

The petition, therefore, must be rejected on this point.

Rule discharged with costs.

Solicitors for the petitioner: Messrs. *Tyabji, Dayabhai & Co.*

Solicitor for the respondent: Mr. *J. C. G. Bowen.*

Rule discharged.

G. G. N.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

November 28.

MAHADEVAPPA DUNDAPPA HAMPIHOLI (ORIGINAL PLAINTIFF), APPELLANT *v.* BHIMA DODDAPA MALED KUTARNAHATTI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

Symbolical possession—Such possession sufficient to interrupt adverse possession between parties to suit—Civil Procedure Code (Act V of 1908), Order XXI, Rule 35.

In 1906, the plaintiff purchased the land in suit from one N. The possession of the land being at that time with the defendants, the plaintiff sued to recover possession in 1911. The defendants contended that they had been adversely in possession since 1898. The decree for possession was, however, passed in plaintiff's favour in 1914, in execution whereof he secured symbolical possession in 1915. In 1918, the plaintiff was obliged to sue again for possession but was again met by the defendants' plea of adverse possession for more than 12 years, it being contended that the symbolical possession obtained in 1915 was ineffective:

* Second Appeal No. 138 of 1921.