

struction of s. 24 sub-s. (2) in the other judgment to which I have just referred.

In the result, the revisional application must be allowed, the order passed by the lower appellate Court must be set aside and an award directed to be drawn between the parties holding that the petitioners would be liable to pay Rs. 192 to the opponents. Rule absolute. The petitioners would be entitled to their costs throughout.

Application allowed.

K. B. S.

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## APPELLATE CIVIL

Before Mr. Justice Shah.

THE INCOME TAX OFFICER, WARD C, SANGLI & ANOTHER PETITIONER, (ORIGINAL APPLICANTS) v. CHANDANBAI BALARAM DOSHI AND ANOTHER OPPONENTS (ORIGINAL DECREE-HOLDER AND JUDGMENT-DEBTOR).\*

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*Practice and Procedure—Execution of Decrees—Proceeds of Auction sale of Judgment-debtors' property—Whether held by Court in trust for the decree holders—Whether the proceeds remain as of the Judgment-debtor—Whether Sales-Tax Officer entitled to recover Sales Tax dues from the proceeds—Bombay Sales Tax Act (Bom. III of 1953) ss. 3, 44, 17—Whether Sales Tax Officer competent to apply under s. 17.*

The proceeds at a Court-sale of unencumbered property of the judgment-debtor are not held by Court for and on behalf of or as a trustee; they continue to belong to the judgment-debtor, subject to the restrictions imposed by the order of attachment, until appropriated by an order of the Court to the claim of the creditor or creditors.

*Oudh Commercial Bank Ltd. v. Secretary of State*,<sup>(1)</sup> disagreed with.

*The Deputy Commissioner of Police Madras v. Vedantam*,<sup>(2)</sup> *Manikham Chettiar v. Income-tax Officer Madura South*,<sup>(3)</sup> *Governor General in Council v. Chhotalal Shivdas and another*,<sup>(4)</sup> followed.

In view of the Notification issued by the Collector of Sales Tax, Bombay under s. 44 of the Act a Sales Tax Officer has the power to apply under s. 17 (1) of the Bombay Sales Tax Act.

CIVIL Revision Applications against the orders passed by M. N. Nargundkar, Esquire, Second Joint Civil Judge, Junior Division, at Sangli.

Darkhast proceedings.

The facts material to this report are set forth in the Judgment.

V. S. Desai, Additional Assistant Government Pleader for the Petitioners in both Civil Revision Applications.

P. T. Patil, Advocate for Opponent No. 1 in C. R. A. 364 of 1955.

\*Civil Revision Application No. 364 of 1955 with Civil Revision Application No. 366 of 1956.

1. [1935] A. I. R. Lah. 319.  
3. [1938] Mad. 744. F. B.

2. [1936] Mad. 428.  
4. (1939) 7 I. T. R. 411.

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G. R. Madbhavi, Advocate for Opponent No. 1 in C. R. A. 366 of 1955.

*Shah J.*—These two revision applications raise common questions. Decrees for money were passed against one Bharamappa Jinappa Shirguppe in two suits. The decree-holder in one suit was Sushilabai wife of Annappa Mithare and the decree-holder in the other was Chandanbai wife of Balaram Doshi. Chandanbai filed darkhast No. 201/54 for execution of her decree and Sushilabai filed darkhast No. 100/54 for execution of her decree. In darkhast No. 201/54 filed by Chandanbai moveable property belonging to Bharamappa was attached. The property was sold on November 29, 1954. Sushilabai in her darkhast got attached and sold some immoveable property of Bharamappa. The immoveable property was sold on October 22, 1954, and the sale was confirmed on November 27, 1954. The total amount realized by sale of the moveable and immoveable property in the two Darkhasts exceeded Rs. 3,000. Bharamappa was liable to pay to the income-tax department an aggregate amount of Rs. 26,586-5-0 as tax and penalty due by him. He was also liable to pay to the sales tax department Rs. 5,471-10-0 as sales tax. On November 8, 1954, the Sales Tax Officer, Sangli, applied under s. 17 of the Bombay Sales Tax Act, 1953 to the Court of the II Joint Civil Judge, Junior Division, Sangli, for recovery of Rs. 5,392-15-0 due by Bharamappa as sales tax. The Sales Tax Officer also applied on December 3, 1954, for recovery of Rs. 81-11-0. The Sales Tax Officer moved the learned Judge for an order that the amounts received in execution be paid over to him. The Income-tax Officer applied on December 11, 1954, for payment to him of the amount lying in Court in part satisfaction of a claim for Rs. 22,686-6-0. He again applied on December 29, for payment of the amount in satisfaction of a further claim for Rs. 3,900. The Sales Tax Officer and the Income-tax Officer claimed priority for the amounts due to their respective departments over the ordinary creditors. The learned Judge of the executing Court rejected the applications filed by the Sales Tax Officer and the Income Tax Officer. In the view of the learned trial Judge, the applications filed by the Sales Tax Officer were not maintainable because the Sales Tax Officer was incompetent to make a demand under s. 17 of the Bombay Sales Tax Act, 1953, from the Civil Court. He also held that auction sale of immoveable property having been held before the date on which the applications were submitted by the Sales Tax Officer, the proceeds of the Sale of immoveable property received by the Court must be deemed to belong to the execution creditors and not to the debtor Bharamappa and the Sales Tax Officer had no right to receive the proceeds of the sale. He then held that even though the sale of moveables took place after the first application was submitted by the Sales Tax Officer, at the date when

the application was submitted the Court did not hold 'money' on account of the judgment-debtor and after the moveables were sold the proceeds belonged to the creditors and not to the judgment-debtor. In the view of the learned trial Judge, when property belonging to a judgment-debtor is sold in execution of a money decree, the proceeds received are held by the Court in trust for the creditors and the judgment-debtor has no interest therein. In arriving at that conclusion, the learned trial Judge followed a judgment of the Lahore High Court, *Oudh Commercial Bank Ltd. v. Secretary of State*.<sup>(5)</sup> The learned Judge preferred the view taken by the Lahore High Court to the view taken by the Madras High Court in *The Deputy Commissioner of Police, Madras, v. Vedantam*.<sup>(6)</sup> The learned trial Judge did not consider the claim made by the Income-tax Officer, because, in his view, if the claim of the Sales Tax Officer succeeded, it being for an amount in excess of the amount realized in execution proceedings, the entire amount must be paid over to the Sales Tax Officer. He also appears to have been of the view that as the application was filed by the Income-tax Officer after December 2, 1954, on which date the Court had ordered distribution of the amount received in execution, the Income-tax Officer was not entitled to receive the same.

Now, there can be no doubt that on a competition between private unsecured creditors and the State, the claim of the State to payment of a debt due to it prevails. Therefore, the amount in dispute having been realized in execution proceedings, by sale of the property moveable and immoveable belonging to the judgment-debtor if the proceeds were held by the Court on behalf of the judgment-debtor, the State must have priority for its claim over unsecured creditors. That income-tax and sales tax dues are debts due to the State is not disputed. But two contentions have been advanced on behalf of the judgment-creditors: (i) that the Sales Tax Officer had no authority to apply for payment of the sales tax dues out of the sale proceeds of property belonging to the judgment-debtor and (ii) that the sale-proceeds of property of the judgment-debtor were held by the Court in trust for the judgment-creditors, and the judgment-debtor had no interest therein.

The State Government by s. 3 of the Sales Tax Act is entitled 'to appoint any person to be a Collector of Sales Tax, and such other persons to assist him.' By s. 44 of the Act, the Collector is entitled 'by order in writing to delegate any of his powers and duties under the Act to any persons appointed under s. 3 to assist him.' Section 17 of the Sales Tax Act, in so far as it is material, provides:

"Notwithstanding anything contained in any law or contract to the contrary, the Collector may, at any time or from time to time, require .....(b) any person who holds or may subsequently hold money for or on account of such dealer, to pay to the Collector so much of the money as is sufficient to pay the amount due by the dealer in respect

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of arrears of the tax and penalty under this Act or the whole of the money when it is equal to or less than that amount."

By notification No. 423-A, dated May, 29, 1953, issued by the Collector of Sales Tax, Bombay State, powers under s. 17 (1) of the Sales Act have been conferred upon all Sales Tax Officers in the State of Bombay. It appears that to the notification the attention of the learned trial Judge was not invited and he held that the Sales Tax Officer was incompetent to submit an application under s. 17. In view of the notification, the decision of the learned trial Judge that the Sales Tax Officer was incompetent to apply under s. 17 cannot be sustained.

The scheme of the Civil Procedure Code for recovery of dues under money decrees by judgment-creditors is clear. When a judgment-creditor applies for execution of a money decree by sale of property, moveable or immovable, of the judgment-debtor, the Court in the first instance orders attachment of the property. After investigation of claims, if any, of third parties the Court orders sale of the property and the property is then sold by the appropriate procedure. A sale of moveables is complete as soon as the final bid is accepted, but the sale of immovable property is required, after investigation of objections if any to the legality thereof, to be confirmed by the Court. After the sale is complete, the Court directs that the proceeds received in Court be paid over to the creditor or creditors who are entitled to satisfy their decree unless by special order the creditor has been permitted to set off his claim against the purchase made by him at the Court auction with leave of the Court. This scheme clearly indicates that until the Court has directed appropriation of the amount to the claim made by the decree-holder or of creditors entitled to rateable distribution, the amount received in Court continues to remain as of the judgment-debtor and is not held by the Court for and on behalf of or as a trustee for the creditor. Under the Civil Procedure Code by levying attachment in execution of a money decree, the judgment-creditor does not obtain a charge on the property attached or its proceeds, nor does he become a secured creditor. Section 73 of the Code of Civil Procedure, which deals with the procedure for rateable distribution among decree-holders, also supports that view. Even if the property has been sold in execution of a decree by one of the creditors, if other decree-holders have before the receipt of assets applied for execution of money decrees, the assets are rateably distributed among all the creditors who have applied for execution.

The learned Judge of the Court below was, in my judgment, in error in holding that when property belonging to the judgment-debtor is sold and the proceeds are received in Court, the proceeds are held in trust for the decree-holder. In *Oudh*

*Commercial Bank, Ltd. v. Secretary of State*,<sup>(7)</sup> a division bench of the Lahore High Court held that :

“Section 73 (3) of the Civil Procedure Code does not confer any jurisdiction on the executing Court to entertain a claim on behalf of the Government in the absence of any decree in support of it. The subsection only saves the rights of the Government, independent of the section, such as they might be, and merely appears to have reference to the right of priority which can be ordinarily claimed in respect of debts due to the Crown. Hence where the Government has not obtained any decree in respect of the premium and arrears of rent claimed by it, the executing Court has no jurisdiction to go into the merits of that claim.”

The Lahore High Court appears to have taken the view that the State can intervene in execution proceedings filed at the instance of a private party only if it has obtained a decree, and s. 73 (3) of the Code of Civil Procedure saves rights of the State independent of the section. The assumption made by the Court in *Oudh Commercial Bank's* case that the right of the State to have recourse to proceeds of sale of property belonging to a judgment-debtor, sold in execution of a money decree, must notwithstanding sub-s. (3) of s. 73 be conditioned by the terms of sub-sections (1) and (2) thereof, is difficult of acceptance. It was also observed by Mr. Justice Bhide in delivering the judgment of the Court in that case (p. 321) :

“After the sale, the proceeds of the sale did not belong to the judgment-debtor, but were held by the Court in trust for the benefit of the creditor executing the decree and such other creditors as had applied for rateable distribution under s. 73, Civil Procedure Code.”

With great respect to the learned Judge, I am unable to accept that as a complete statement of the law. In my view, the proceeds at a Court sale of unencumbered property of the judgment-debtor continue to belong to him, subject to the restrictions imposed by the order of attachment, until appropriated by order of the Court to the claim of the creditor or creditors.

In *Manikkam Chettiar v. Income-tax Officer, Madura South*,<sup>(8)</sup> a full bench of the Madras High Court held that an Income-tax Officer was entitled to apply for an order directing payment to him out of the sale proceeds of property belonging to the judgment-debtor sold in execution of a money decree when the judgment-debtor was liable to pay income-tax. It was held :

“If the Crown is entitled to prior payment over all unsecured creditors, there is no reason why the Crown should not be entitled to apply to the Court for an order directing its debt to be paid out of monies in Court belonging to the debtor without having to file a suit. It must no doubt be a debt which is not disputed or is indisputable. The Crown is entitled to priority in respect of arrears of income-tax due to it and the demand of the Income-tax Officer is not open to question.”

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This view of the Madras High Court was approved in a judgment of this Court, *Governor-General in Council v. Chotalal Shivdas, and another.*<sup>(9)</sup> It was held in that case :

“Arrears of unpaid income-tax due by an assessee is a debt due to the Crown, and as such the debt must have precedence over all other debts. Consequently in the competition between the Crown and the subject in respect of payment of their respective debts of equal degree Crown’s right must prevail. The Court can order payment of a Crown debt due by the debtor, on the application of the Crown without a formal attachment being issued, where there are funds in Court belonging to the debtor.”

Evidently, the Sales Tax Officer had submitted an application on November 8, 1954, for payment of Rs. 5,392-15-0 due as sales tax. Thereafter it was not open to the learned Judge by order, dated December 2, 1954, to direct appropriation of the amount to the claims of ordinary creditors. The Court below was, therefore, in error in rejecting the application filed by the Sales Tax Officer. It is unnecessary, in this application, to consider whether the Income-tax Officer is also entitled to make the claim for recovery of the amount due as income-tax from the debtor. Rule is made absolute with costs in this Court in the two revision application and it is directed that the amount lying in Court be paid over to the petitioners.

Rule absolute.  
 G. N. V.

9. (1939) 7 I. T. R. 411.

## APPELLATE CIVIL

Before Mr. Justice Shah.

MOKSHAMADANLAL CHUNILAL THAKORE (ORIGINAL APPLICANT)  
 PETITIONER v. HARIPRASAD VISHNUPRASAD DESAIJI (ORIGINAL  
 OPPONENT) RESPONDENT.\*

*Provincial Insolvency Act (V of 1920), s. 9 (1) (c)—Indian Limitation Act (IX of 1908), s. 14—Application for adjudication as an insolvent presented to a wrong Court and returned for presentation to proper Court—Application presented to proper Court more than three months after act of insolvency—Whether application could be entertained—Whether s. 9 (1) (c) of the Provincial Insolvency Act prescribes a condition precedent or period of limitation—Construction—Whether s. 14 of the Indian Limitation Act applicable.*

Section 9 (1) (c) of the Provincial Insolvency Act, 1920, by enacting that the act of insolvency on which the petition is grounded must have occurred within three months before presentation of the petition, provides a condition precedent to the exercise of jurisdiction by the Insolvency Court; it does not prescribe a period of limitation. Section 14 of the Indian Limitation Act, 1908, cannot therefore be relied upon in applying the test prescribed by s. 9 (1) (c) of the Provincial Insolvency Act, 1920.

On February, 28, 1951 the respondent committed an act of insolvency and on April 23, 1951 the petitioner applied to the Court at Broach for

\*Civil Revision Application No. 474 of 1955.