IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 6TH DAY OF JUNE 2012/16TH JYAISHTA 1934

WP(C).No. 9411 of 2012 (B)

PETITIONER:

1. MISS.M.MEENAKSHY (MINOR), AGED 17 YEARS.

2. MASTER M.KRISHNA KUMAR(MINOR)
   AGED 14 YEARS
   (REPRESENTED BY MOTHER AND GUARDIAN MRS.USHA MURUGAN
   W/O.LATE T.MURUGAN FOR PETITIONERS 1 & 2)
   MEENAKSHY BHAVAN, PUTHIYA THRIKKOVIL,
   THIRUNAKKARA KOTTAYAM 686001

   BY ADVS.SRI.T.M.SREEDHARAN (SR.)
   SMT.NISHA JOHN
   SRI.V.P.NARAYANAN
   SMT.BOBY M.SEKHAR

RESPONDENT(S):

1. THE ASSISTANT COMMISSIONER OF INCOME TAX
   CIRCLE-1 PUBLIC LIBRARY BUILDINGS, SHASTRY ROAD,KOTTAYAM

2. THE COMMISSIONER OF INCOME TAX
   PUBLIC LIBRARY BUILDINGS SHASTHRY ROAD, KOTTAYAM

3. INDUSIND BANK LTD,
   KOTTAYAM BRANCH, REGENCY SQUARE,
   K.K.ROAD, COLLECTORATE P.O, KOTTAYAM 686 002

4. AXIS BANK NO.LX-311, A2 CENTURY TOWERS,
   NEAR Y.W.C.A KOTTAYAM 686 001

5. THE COMMISSIONER OF INCOME TAX (APPEALS)-IV
   KERA BHAVAN, SRVHS ROAD, COCHIN 682 011

   BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-06-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VK

WP(C).No. 9411 of 2012 (B)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE COPY OF THE LETTER DATED 27.03.2012 GIVEN BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.
EXT.P2	TRUE COPY OF THE JUDGMENT DATED 16.03.2012 IN WA NO.491 OF 2012 OF THIS HON'BLE COURT
EXT.P3	TRUE COPY OF THE LETTER DATED 08.02.2012 RECEIVED FROM THE 3RD RESPONDENT BANK.
EXT.P4	TRUE COPY OF THE LETTER DATED 8.02.2012 RECEIVED FROM THE 4TH RESPONDENT BANK.

RESPONDENTS' EXHIBITS : NIL

/ TRUE COPY /

P.A. TO JUDGE

VK

P.R. RAMACHANDRA MENON, J.

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W.P. © No. 9411 OF 2012

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Dated this the 6th June, 2012

<u>J U D G M E N T</u>

The petitioners have approached this Court with the following prayers:

> *"1) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to lift the attachment of the Savings Bank Accounts of the petitioners vide Account Nos.0186 DW0430001 of 1st petitioner in the 3rd respondent Bank as well as the Savings Account No.910010041277655 of 1st petitioner in 4th respondent Bank and Savings Bank Account No.910010041767860 of the 2nd petitioner in the 4th respondent Bank, forthwith.*
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> *ii) To declare that the Savings Bank Accounts of the 1st petitioner in the 3rd and 4th respondent Banks and the Savings Account No.910010041277655 of 1st petitioner in 4th respondent Bank and Savings Bank Account of the 2nd petitioner in the 4th respondent Bank are not liable for attachment as per the judgment Ext.P2;*
>
> *AND*
>
> *(iii) To grant such other and further reliefs as*

this Hon'ble Court may deem fit and proper in the facts and circumstances of the case "

2. Mr. T.M. Sreedharan, the learned Sr. Counsel submits that there is absolutely no rhyme or reason on the part of the respondents in causing the bank account of the minors to be attached; more so in view of the clear mandate given by a Division Bench of this Court vide Ext.P2 judgment.

3. The learned Standing Counsel appearing for the respondent Department submits that the reliance sought to be placed on Ext.P2 judgment is not correct or sustainable and the interference made by the Division Bench was with reference to the extent of demand i.e, 3,96,11,900/- in respect of the assessment year 2008-09. The submission made from the part of the learned Standing Counsel that various other demands are also pending in respect of other assessment years and also in respect of the connected firms, was also taken note of and it was accordingly, that the issue was left open with regard to the claim in respect of other firms, but for confining the relief only to the extent as stipulated therein.

4. The respondents have filed a statement, wherein it has been stated that the establishment 'Meenakshy Group' consists of firms and proprietary concerns, which are mainly engaged in the business of wholesale trading of lotteries and have diversified the business to the fields of Textiles and Bakery as well. In respect of the concerned assessment year, quite a substantial amount is due and proceedings are being pursued by the concerned authorities . It is also stated that the notice under section 226(3) was issued referring to due amount of Rs.3,96,11,904/-. But subsequently, it was observed that there was an inadvertent mistake, under which circumstance a garnishee notice was issued to the firm 'Meenakshy Enterprises' ' in respect of the due amount of Rs. 18,79.05,386/- for the assessment year 2008-09. The mistake was corrected by issuing proper notice on 29.03.2012. The issue considered by the Division Bench vide Ext. P2 and the amount satisfied by the concerned petitioner to the tune of Rs.50 lakhs as ordered by the Division Bench of this Court were in respect of the demand raised in the name of Sri T. Murugan, for the assessment year

2008-09 and it has no relevancy or significance with regard to the present issue or the liability to be satisfied in respect of the other firms by the parties concerned. It is also stated that the account maintained by the petitioners with the respondents 3 and 4 is not being operated by the minors and the nature of transactions clearly reveal that it is part of the running business by the concerned firm. The sum and substance of the contentions of the petitioners is however that the Division Bench of this Court, in respect of the assessment year 2008-09 has intercepted the coercive proceedings subject to satisfaction of a sum of Rs.50 lakhs, which is stated as complied with and no further proceedings are liable to be pursued against the petitioners, particularly by causing the Savings Bank account of the petitioners attached .

5. On going through the materials on record, it is seen that the account of the petitioners was attached much earlier, in February, 2012, which led to the intimation served by the Banks to the petitioners vide Exts. P3 and P4 on 08.02.2012. As a matter of fact, the issue was finalised by the Division Bench of

this Court by passing Ext.P2 judgment only on 16.03.2012 . At the time of finalisation of the said proceedings, the petitioners did not have any case with reference to Exts.P3 and P4 and the issuance of the said proceedings were not brought to the notice of the Division Bench, when the writ appeal was finalised vide Ext.P2 judgment. If at all any clarification was needed by the petitioners, with reference to Exts.P3 and P4, it could have been made possible by way of other appropriate proceedings. The attempt of the petitioners to club the above liability in respect of different firms, as explained by the respondents 1 and 2 in their statement, by filing the present writ petition is not liable to be entertained. There is absolutely no merit in the writ petition.

Interference is declined and the writ petition is dismissed.

P.R. RAMACHANDRA MENON,
JUDGE.

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