IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

HEARD ON : 10.05.2022
DELIVERED ON : 10.05.2022

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

A.P.O.T NO. 77 OF 2022
IA NO.GA/1/2022

ARISING OUT OF

W.P. NO. 1839 OF 2022

SREI EQUIPMENT FINANCE LIMITED

VERSUS

ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX AND OTHERS.

Appearance :-
Mr. J.P. Khaitan, Sr. Advocate.
Mr. Somak Basu, Advocate.
...For the Appellant

Mr. Tilak Mitra, Advocate.
...For the Respondent

JUDGMENT

The Judgment of the Court was delivered by

T.S. SIVAGNANAM, J. :- We have heard Mr. J. P. Khaitan, learned senior counsel appearing with Mr. Somak Basu, learned Advocate for the appellant/assessee and Mr. Tilak Mitra, learned standing counsel for the respondent.

2. The order impugned is dated 13th April, 2022 passed in WPO/1839/2022. The appellant had filed the writ petition challenging the notice dated 23rd March, 2022 which is an opportunity granted to the assessee to show cause as to why the proposal made in the notice by way of giving effect to the order passed by the PCIT, Kolkata-II under Section 263 of the Income Tax Act, 1961 should not be made against the appellant/assessee. The assessee had submitted their reply dated 26th March, 2022 in which the first contention raised by the assessee was that the proceedings are liable to be stayed since the assessee has been admitted for Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) and presently the assessee is under moratorium by orders of the National Company Law Tribunal (NCLT). In this regard, the assessee referred to Section 14 of the Code and also extracted the relevant portion of the order passed by the NCLT. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in *Alchemist Asset Reconstruction Company vs. Hotel Gaudavan (P) Ltd. & Ors.* reported in (2017) 88 taxmann.com 202 (SC) and the decision in the case of *Mr. Rajendra K. Bhutta vs.*

Maharashtra Housing and Area Development Authority & Anr. (Civil Appeal No.12248 of 2018 dated 19.02.2020) and the other decisions of the Income Tax Appellate Tribunal, Delhi Bench and also the Securities Appellate Tribunal. Further, the assessee contended that in terms of Section 238 of the Code, the provisions of the Code shall override the provisions of the Income Tax Act and reference was also made to Section 178 of the Income Tax Act, which also provides that the Section shall override all other laws for the time being in force except the Insolvency and Bankruptcy Code (IBC). In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in *PCIT vs. Monnet Ispat and Energy Ltd.* reported in (2018) SCC Online SC 984. Therefore, the assessee requested the assessing officer to keep the proceedings in abeyance till the completion of the CIRP. Without prejudice to such submission, the assessee also dealt with the merits of the proposed assessment. In the penultimate paragraph of the explanation, the assessee requested for grant of opportunity of personal hearing in view of Clause (VI) to (IX) of Section 144B(7) of the Income Tax Act, 1961.

3. Thereafter, the assessee filed the writ petition being WPO/1839/2022 challenging the show cause notice dated 23rd March, 2022. After filing the writ petition the assessee sent a letter to the Authority on 29th March, 2022 pointing out that similar proceedings, under Section 263 of the Act for the assessment year 2016-17, have been initiated against the assessee by the PCIT-II which is also time barring on 31st March, 2022 and notice dated 8th March, 2022 was received by the assessee for initiating assessment proceedings under Section

143(3) read with Section 263 of the Act for the said assessment year 2016-17 and in response to such notice a similar request was made by the assessee to the PCIT-II to keep the impugned proceedings in abeyance till the completion of CIRP. PCIT-II, vide order dated 23rd March, 2022 had kept the proceedings in abeyance.

4. Though the assessee had requested for an opportunity of personal hearing in their reply dated 26th March, 2022, it appears that the same was not afforded but "so called hearing" is stated to have been conducted by way of exchanging of messages in the chat box. The assessee vide letter dated 29th March, 2022 pointed out that due to technical issues the personal hearing could not be conducted through video conferencing and requested for an opportunity of effective hearing be afforded to the assessee. The assessing officer did not send any reply to the said communication, however, proceeded to pass the assessment order dated 30th March, 2022. Soon after receiving the said order, the assessee filed a supplementary affidavit before the writ Court bringing on record before the learned writ Court about the assessment order passed during the pendency of the writ petition. The learned Single Bench had dismissed the writ petition by the impugned order dated 13th April, 2022.

5. On going through the impugned order we find that the issue as to whether the proceedings had to be kept in abeyance by the assessing officer in the light of the insolvency proceedings which were pending and the effect of Section 14 of the Code have not been dealt with though that was the core issue which was canvassed in the writ petition. The learned writ Court was of the opinion that the

case of the assessee cannot be a case of violation of principles of the natural justice as the assessee had participated in the assessment proceedings and they wanted to challenge the assessment order before the writ Court. In our considered view there is a slight mistake on facts because the assessee had impugned the assessment order dated 30th March, 2022 by way of a supplementary affidavit since this assessment order was passed during the pendency of the writ petition. In the writ petition, what was impugned was the show cause notice dated 23rd March, 2022. As pointed out earlier, in response to the show cause notice, the assessee had specifically raised the legal issue with regard to the effect of the provisions of the IBC and without prejudice to the said submission, the assessee also submitted their reply on the merits on the proposed assessment which the assessing officer proposed to pass. More importantly, the assessing officer also pointed out that in the assessee's own case, the PCIT-II had acceded to a similar request and kept the proceedings in abeyance by an order dated 26th March, 2022 in view of the order passed by the NCLT dated 8th October, 2021. This is precisely the request which the assessee made with the assessing officer who appears to have brushed aside such request.

6. On going through the assessment order dated 23rd March, 2022, which, in fact, is an ex parte assessment order, it appears that the assessing officer discussed the effect of Section 14 of the IBC and rendered certain opinion on the effect of certain provisions of the IBC. We observe that the assessment order is an ex parte assessment order because the request made by the assessee for personal hearing was not granted but the personal hearing appears to have been

conducted by way of exchange of chat messages. It is not clear as to how such an opportunity can be said to be an effective opportunity to the assessee. The assessing officer failed to understand that opportunity of personal hearing should be meaningful and it is not an empty formality. These basic legal tenets have not been noted by the assessing officer. In any event, the assessing officer was required to take note of the judicial pronouncements which were referred to and relied upon by the assessee in their reply dated 26th March, 2022. We find that there is no reference or discussion on those aspects. Therefore, we are of the clear view that the assessing officer committed grave error in proceeding to complete the assessment and pass the order dated 30th March, 2022 and refused to stay the proceedings till the completion of the Insolvency Resolution Process.

7. At this juncture, it would be important to note the decision the Hon'ble Supreme Court in the case of Alchemist Asset Reconstruction Company *(supra),* wherein the Hon'ble Supreme Court had pointed out that the mandate of the new insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. This legal principle should have been borne in mind by the assessing officer before he proceeded to pass the assessment order. Therefore, we are of the clear view that the assessment order dated 30th March, 2022 has to be set aside and the matter has to be restored to the file of the assessing officer and the matter shall be kept in abeyance till the completion of the insolvency resolution proceedings.

8. In the penultimate portion of the order, the learned writ Court while dismissing the writ petition has imposed cost of Rs.10,000/- on Mr. Somak Basu, learned Advocate. The learned writ Court was of the opinion that the costs need to be imposed because of his rude behaviour in the Court and addressing the Chair in a disrespectful manner. In the appeal, several grounds have been raised on this very particular issue. Mr. Basu, learned Advocate has appeared before us and submitted that he had not uttered any disrespectful expression to the Court and his endeavour was to persuade the Court by beseeching the Court to consider Sections 14 and 238 of the IBC and the relevant judgments of the Hon'ble Court. Furthermore, Mr. Basu would submit that it was his endeavour to bring to the notice of the Hon'ble Court that there has been gross violation of principles of natural justice and the assessing officer, during the pendency of the writ petition, without acceding to the request for deferment of the proceedings, had completed the assessment and passed the assessment order dated 30th March, 2022. On this issue, we need to take note of the situation of similar nature which had received the attention of the Hon'ble Supreme Court. In this regard, we rely upon the decision of the Hon'ble Supreme Court in *Neeraj Garg vs. Sarita Rani & Ors.* reported in (2021) 9 SCC 92. The appeal before the Hon'ble Supreme Court was by a practising lawyer before the High Court of Uttarakhand with around 17 years standing in the Bar. In the appeal, he sought for expunging certain observations made against him by the learned Judge of the High Court while deciding four cases in which the appellant therein was representing one of the contesting parties. We find from paragraph 4 of the

judgment, the learned Court had made certain observations against the said Advocate expressing its deep anguish and also making observation that there was suppression of material facts. However, in the case on hand, there is no such finding recorded by the learned single Bench except to state that the submission of Mr. Basu was rude and disrespectful in the opinion of the learned Single Bench. The Hon'ble Supreme Court, after considering the facts in detail, had made the following observations:

> ***"15.*** *While it is of fundamental importance in the realm of administration of justice to allow the Judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the Judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel while may have no bearing on the adjudication of the dispute before the Court.*
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> ***16****. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the counsel without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.*

> ***17.*** *The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the Court judgments, it will be a cross that the appellant will have to bear, all his life. To allow to suffer thus, would in our view be prejudicial and unjust."*

9. As pointed out by the Hon'ble Supreme Court making strong observations against the counsel appearing for a party without opportunity of being heard, would negate the principles of *audi alteram partem*. Further, the Hon'ble Supreme Court had pointed out that there should be requisite degree of restraint and sobriety on the part of the Court. Further, the Hon'ble Supreme Court has held that if the comments remain unexpunged in the Court's judgment, it will be a "cross" that the appellant will have to bear all his life and to allow him to suffer, would be prejudicial and unjust. As pointed out by us, the learned Single Bench while deciding the writ petition had not adverted to the grounds of challenge made by the appellant questioning the show cause notice and proceeded to dismiss the writ petition on the ground that there is no violation of principles of natural justice.

10. We do not agree with the said finding for more than one reason. Firstly, the assessing officer after receipt of the reply dated 26th March, 2022 did not hear the assessee on the issue relating to the effect of IBC. The so called hearing by way of exchange of chat messages cannot satisfy the test of fairness or the test embodied in the principles of fair play. That apart, the assessing officer was so

adamant and he even failed to take note of the order passed by the PCIT-II, who had acceded to similar request made on behalf of the assessee for a later assessment year which was pending on the file of the PCIT-II under Section 263 of the Act. Therefore, we are of the considered view that the observations made against the learned Advocate appearing for the appellant/assessee were not required in the facts and circumstances of this case.

11. While on this issue we take note of the decision of the High Court of Judicature of Madras in the case of *Director General of Income Tax (INV.) and Others vs. T. S. Kumaraswamy, Proprietor, Christy Friedgram Industry and Others reported in 2019 SCC Online Mad 5453*. The said appeal filed by the Income Tax Department was directed against certain adverse remarks made against the officer of the Income Tax Department and their senior standing counsel. The first objection which was raised was by the writ petitioner/assessee that he should be heard in the matter. This was rejected by the following decisions of the Hon'ble Supreme Court as the writ petitioner/assessee was not concerned with the subject in issue and, therefore, no notice was required to be issued to the assessee. The next aspect of the matter is whether the observations/remarks made by the learned Single Judge against the officer of the Department and the senior standing Counsel are required to be expunged or not. In this regard the Court noted the following decisions of the Hon'ble Supreme Court.

> ***"15**. In the case of State of U.P. v. Mohammed Naim [reported in AIR 1964 SC 703], the Hon'ble Supreme Court pointed out that it had been judicially recognized that in the matter of making disparaging remarks against*

persons or authorities, whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider:—

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

16. *It was further pointed out that it had also been recognized that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve.*

17. *In the decision in the case of Niranjan Patnaik v. Sashibhushan Kar [reported in (1986) 2 SCC 569], after referring to the decision in the case of Mohammed Naim, the Hon'ble Supreme Court pointed out that it is settled law that harsh and disparaging remarks are not to be made against persons and authorities, whose misconduct comes into consideration before courts of law unless it is really necessary for the decision of the case as an integral part thereof to animadvert on that conduct. Accordingly, the Hon'ble Supreme Court held that the adverse remarks against the appellant therein were neither justified nor called for. It was further pointed out that higher the forum and greater the powers, the greater the need for restraint and the more mellowed reproach should be.*

18. *In the decision in the case of A.M. Mathur v. Pramod Kumar Gupta [reported in (1990) 2 SCC 533], the former Advocate General of the State of Madhya Pradesh filed an appeal to expunge certain derogatory remarks made against him by the High Court. The Hon'ble Supreme Court pointed out that judicial restraint might better be called judicial respect i.e. respect by the Judiciary; respect to those, who come before the court as well as to*

other coordinate branches of the State, the Executive and the Legislature, that there must be mutual respect and that when these qualities fail or when litigants and public believe that the Judge had failed in these qualities, it will be neither good for the Judge nor for the judicial process. Ultimately, the remarks made against the former Advocate General were expunged.

19. *In the decision in the case of State of Bihar v. P.P. Sharma [reported in 1992 Supp (1) SCC 222], the Hon'ble Supreme Court held that it is settled law that the person, against whom mala fides or bias was imputed, should be impleaded conominee as a party respondent to the proceedings and given an opportunity to meet those allegations and that in his/her absence, no enquiry into the allegations would be made otherwise it itself is violative of the principles of natural justice, as it amounts to condemning a person without opportunity.*

20. *In the decision in the case of Dr. Dilipkumar Deka v. State of Assam [reported in (1996) 6 SCC 234], the Hon'ble Supreme Court referred to the decision in the case of Mohammed Naim, which was quoted with approval in the decisions in the cases of:*
(i) Jage Ram, Inspector of Police v. Hans Raj Midha [reported in (1972) 1 SCC 181 : AIR 1972 SC 1140],
(ii) R.K. Lakshmanan v. A.K. Srinivasan [reported in (1975) 2 SCC 466 : AIR 1975 SC 1741] and
(iii) Niranjan Patnaik v. Sashibhusan Kar [reported in (1986) 2 SCC 569 : AIR 1986 SC 819].

21. *It was pointed out that in spite of the above catena of decisions, the learned Judge did not, before making the remarks, give any opportunity to the appellants therein, who were, admittedly, not parties to the revision*

petition to defend themselves. It was further pointed out that it cannot be gainsaid that the nature of remarks the learned Judge made, cast a serious aspersion on the appellants affecting their character or reputation and may ultimately affect their career also. The Hon'ble Supreme Court ultimately held that the Court should have used a temperate language and moderate expressions while criticising the appellants therein and shown judicious restraint, allowed the appeal and quashed the disparaging remarks made against the appellants therein.

22. *In the decision in the case of State of Karnataka v. Registrar General, High Court of Karnataka [reported in (2000) 7 SCC 333], the challenge was to an order passed by the Division Bench of the High Court of Karnataka on the ground that it went outside the scope of the lis before it and made certain observations, which are not in tune with the perceptions of judicial exercise. The Hon'ble Supreme Court, at the very outset, pointed out that for disposal of the said appeal, there was no necessity to issue notice to the sole respondent therein namely the Registrar General of the High Court of Karnataka, as he would have nothing to say about the impugned directions and therefore disposed of the matter without bringing the respondent therein before the Court.*

23. *As pointed out by us earlier, the cases on hand are also on the same pedestal, as the respondent herein - writ petitioner/assessee can say nothing about the remarks made by the learned Single Judge against the officer of the appellant Department and their Senior Standing Counsel.*

24. *Reverting back to the decisions, the Hon'ble Supreme Court in the case of State of Karnataka v. Registrar General, High Court of Karnataka, referred to the decision in the case of Mohammed Naim and other decisions and set*

aside the directions/remarks made by the Division Bench of the High Court of Karnataka.

25. *In the decision in the case of Manish Dixit v. State of Rajasthan [reported in (2001) 1 SCC 596], the Hon'ble Supreme Court pointed out that it had repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures and that such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. After referring to the earlier decision in the case of Dr. Dilipkumar Deka, the appeal was allowed and the disparaging remarks were expunged.*

26. *In the decision in the case of State of Gujarat v. K.V. Joseph [reported in (2001) 2 SCC 156], the Court, while quashing the remarks made, observed that there is violation of the principles of natural justice, as no notice was sent in the matter for the purpose of any explanation neither any explanation obtained and consequently, held that the remarks cannot be sustained.*

27. *In the decision in the case of Testa Setalvad v. State of Gujarat [reported in (2004) 10 SCC 88], the Court, while setting aside the observations made, held that the observations did not, prima facie, appear to have any relevance to the subject matter of dispute before the High Court and uncalled for observations were directed to be set aside. It was also held that they must be treated as having never existed or been part of the High Court judgment.*

28. *In the decision in the case of Samya Sett v. Shambu Sarkar [reported in (2005) 6 SCC 767], the Hon'ble Supreme Court, in the opening paragraph of*

the judgment, pointed out that the appeal reminded them of a golden advice given by the Supreme Court before more than four decades in the decision in the case of Mohammed Naim and proceeded to consider the question as to whether the remarks could be sustained. The Hon'ble Supreme Court ultimately held that the remarks were uncalled for and unwarranted and were accordingly quashed.

29. *In the decision in the case of Public Concern for Governance Trust, where the appeal was filed by the State to expunge the remarks against the then Chief Minister, the appeal was held to be maintainable and the serious aspersions cast on the then Chief Minister affecting his reputation having been made without giving an opportunity were quashed.*

30. *In the decision in the case of Parkash Singh Teji v. Northern India Goods Transport Company Private Limited [reported in (2009) 12 SCC 577], the Hon'ble Supreme Court, while pointing out about the judicial restraint and discipline, referred to the decision in the case of 'K', a Judicial Officer, In re, [reported in (2001) 3 SCC 54] wherein it was held that the overall test is that criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve.*

31. *In the decision in the case of Amar Pal Singh v. State of Utter Pradesh [reported in (2012) 6 SCC 491], the Court made observations as to how the Superior Court has to employ the language in a judgment and on facts, having found that the said procedure had not been followed, the Hon'ble Supreme Court expunged the remarks made therein.*

32. *In the decision in the case of Om Prakash Chautala v. Kanwar Bhan [reported in (2014) 5 SCC 417], the Hon'ble Supreme Court pointed out that reputation is fundamentally a glorious amalgam and unification of virtues,*

which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on the posterity. It was further observed that it is a nobility in itself, for which, a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea, that the said virtue has both horizontal and vertical qualities and that when reputation is hurt, a man is half-dead.

33. *In the decision in the case of Arun Devendra Oza v. State of Gujarat [reported in (2001) 10 SCC 195], once again the Hon'ble Supreme Court referred to the celebrated decision in the case of Mohammed Naim and set aside the adverse remarks made against the appellant therein.*

34. *In the decision in the case of Lanka Venkateswarlu v. State of Andhra Pradesh [reported in (2011) 4 SCC 363], the Hon'ble Supreme Court referred to the decision in the case of Mohammed Naim and observed that the use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by the Supreme Court in several cases.*

35. *In the decision in the case of Badri Prasad Mathur v. Administrator, Nagpur Palika Parishad [reported in 1996 MPLJ 746], the appeal was filed by a party to the litigation to expunge the remarks made against his counsel. The appeal was held to be maintainable and the Court, after referring to the celebrated decision in the case of Mohammed Naim and other decisions, allowed the appeal and expunged the remarks.*

36. *In the decision in the case of Shyam Narayan Tripathi v. State of M.P. [reported in 2001 (2) MPLJ 234], a petition was filed under Section 482 of the Criminal Procedure Code to expunge the remarks made against the advocate, who had filed a memo before the Court seeking for an adjournment on the ground of illness. This memo was rejected by the Court*

and certain remarks were made against the advocate. The remarks, having been made without notice or opportunity to the concerned advocate, were held to be bad, apart from holding that the remarks were unjustified and uncalled for and therefore, liable to be expunged.

37. *In the decision a learned Single Judge of this Court in the case of T. Vetriselvan v. Tamil Nadu Mercantile Bank Limited [reported in 2002 (1) CTC 513], one of the questions, which fell for consideration is as to the what was the effect of an opinion given by a counsel to a party. It was held that the opinion given by a counsel was mainly based upon the records produced by his client and that the plaintiff had no right whatsoever to question the same or find fault with the opinion.*

38. *In the decision in the case of K. Ponnammal v. A. Loganathan [reported in 2010 (2) CTC 63], a learned Single Judge of this Court referred to Section 126 of the Indian*
Evidence Act and held that this protective umbrella also saves the counsel from unwanted and unnecessary proceedings".

12. After referring to the above decisions the Court pointed out that the learned Single Judge therein, before making remarks did not give any opportunity to the appellant therein who were not parties to the writ petition to defend themselves. The decision of the Hon'ble Supreme Court in the case of *State of Karnataka* v. *Registrar General, High Court of Karnataka* [reported in (2000) 7 SCC 333], was also noted. Further, the court noted the decision in *Manish Dixit* v. *State of Rajasthan* [reported in (2001) 1 SCC 596] wherein the Supreme Court pointed out and cautioned that before any ex parte remark is made by the Court against any person, particularly, when such remarks could

eschew serious consequences on the future career of the person, he should be given an opportunity of being heard in the matter in respect of the proposed remarks or strictures otherwise the adverse remark would be in violation of the principals of natural justice. On similar grounds the adverse remarks were quashed by the Hon'ble Supreme Court in the case of *State of Gujarat Vs. K.V. Joseph* reported in 2001 (2) SCC 156, *Testa Setalvad v. State of Gujarat* [reported in (2004) 10 SCC 88] and also in *Samya Sett v. Shambu Sarkar* [reported in (2005) 6 SCC 767]. The legal principle was culled out in the following paragraphs:

> *"**37**. In the decision a learned Single Judge of this Court in the case of T. Vetriselvan v. Tamil Nadu Mercantile Bank Limited [reported in 2002 (1) CTC 513], one of the questions, which fell for consideration is as to the what was the effect of an opinion given by a counsel to a party. It was held that the opinion given by a counsel was mainly based upon the records produced by his client and that the plaintiff had no right whatsoever to question the same or find fault with the opinion.*
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> ***38.** In the decision in the case of K. Ponnammal v. A. Loganathan [reported in 2010 (2) CTC 63], a learned Single Judge of this Court referred to Section 126 of the Indian Evidence Act and held that this protective umbrella also saves the counsel from unwanted and unnecessary proceedings.*
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> ***39**. The legal principle that can be culled out from the above decisions is that unwarranted comments and remarks were not called for and what was important to bear in mind was as to whether the three cardinal tests laid down by the Hon'ble Supreme Court in the decision in the case of Mohammed Naim had been complied with. One of those three tests is as to whether the party, whose conduct is in question is before the court or has*

an opportunity of explaining or defending himself. In the instant case, neither the officer of the Department nor its Senior Standing Counsel had an opportunity of explaining or defending themselves. Therefore, the first test laid down in the decision in the case of Mohammed Naim has not been fulfilled in the instant case".

13. The above decision would render full support to our conclusion that the adverse observation made against the learned Advocate for the appellant/assessee and the imposition of cost has to be expunged/set aside.

14. In the result, the appeal is allowed. The assessment order dated 30th March, 2022 is set aside and the matter is restored to the file of the assessing officer and the matter shall be kept in abeyance till the completion of the insolvency resolution proceedings. Soon after the proceedings are completed, the assessee shall inform, in writing, to the assessing officer in that regard. In the light of the observations made by us and taking note of the judgment of the Hon'ble Supreme Court in the Neeraj Garg *(supra)* the adverse observations and comments made against the learned Advocate for the appellant/assessee stand expunged in its entirety and the imposition of costs stands vacated. The application for stay being IA No.GA/1/2022 stands closed. No costs.

(T.S. SIVAGNANAM, J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

S.Das/A/s.