
(2012) 03 KL CK 0291
In the High Court Of Kerala
Case No : C.R.P. No. 1137 of 2011

Antony, N.G.

APPELLANT

Vs

Little Flower Kuries and Enterprises Limited

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 48, 151, 60, 60(1)(i), 60(i)
Companies Act, 1956 — Section 617

Citation : (2012) 4 ILR (Ker) 150 : (2012) 3 KLJ 695

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Joseph Edakkatt and Sri C.A. Chacko, for the Appellant; Jimmy John Vellanikaran, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K.T. Sankaran

1. The petitioner is an Engine Fitter in Naval Ship Repair Yard, Kochi. He is the judgment-debtor in E.P. No. 10 of 2003 in O.S. No. 168 of

2000, on the file of the court of the Principal Sub Judge, Kochi, the decree being one for money. In execution of the decree, the salary of the

judgment-debtor was attached to the extent of Rs. 2,766 per month from September, 2003 onwards. The order was forwarded to the disbursing

officer, who has to disburse the salary to the judgment-debtor. The disbursing officer recovered only a sum of Rs. 1,340 per month from

September, 2003 onwards. The disbursing officer issued a letter dated 29-9-2003 to the Court, which reads as follows:

1. Please refer to Court Order O.S. No. 168/2000 and E.P. No. 10/2003 for attachment of salary of Rs. 2,766 per month for Rs. 66,384.

2. The basic pay of Shri N.G. Antony, Engine Fitter (HS-II excluding other allowances such as HRA, DA and CCA is Rs. 5,100 (Rupees five thousand one hundred only). u/s 60(i) of Code of Civil Procedure, salary attachment, the first thousand rupees and 213rd of the remaining basic pay is exempted from attachment. Therefore the maximum amount recoverable from the salary of the above individual per month is Rs. 1,3407 (Rupees one thousand three hundred forty only).

3. In view of the above, a sum of Rs. 1340 (Rupees one thousand three hundred forty only) will be recovered from his salary with effect from Sep. 2003 onwards.

The judgment-debtor filed E.A. No. 129 of 2005 u/s 60(1)(i) and Section 151 of the CPC to finally exempt salary of the petitioner from attachment and to issue an order lifting the attachment of salary. In the application, it was stated that the salary of the judgment-debtor was under attachment for a continuous period of 23 months from September, 2003 onwards. By attaching salary for one more month, attachment of salary for a period of 24 months would be over.

2. The decree-holder filed objections to E.A. No. 168 of 2000 and contended that as per the order of the Court a sum of Rs. 2,766 per month was attached from the salary of the judgment-debtor, but the disbursing officer reduced that amount and realized only Rs. 1,340 per month from the salary of the judgment-debtor. The disbursing officer was not justified in violating the order passed by the Court. It was also contended that the disbursing officer should be directed to deposit the deficit amount before Court.

3. The court below held that the disbursing officer was not justified in reducing the amount of attachment as ordered by the Court and, therefore, dismissed the Execution Application.

4. Rule 48 of Order XXI provides for attachment of salary or allowances of a servant of the Government or railway company or local authority.

Sub-rules (1) to (3) of Rule 48 of Order XXI are relevant and they are extracted below:

48. Attachment of salary or allowances of servant of the Government or railway company or local authority.--(1) Where the property to be

attached is the salary or allowances of a servant of the Government or of a servant of a railway company or local authority, or of a servant of a

corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in

Section 617 of the Companies Act, 1956, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the

Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in

one payment or by monthly installments as the Court may direct; and, upon notice of the order to such officer as the appropriate Government may

by notification in the Official Gazette appoint in this behalf-

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other

person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly installments, as

the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to

instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the

order, or the monthly installments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to

time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and

unsatisfied order of attachment, the officer appointed by the appropriate Government in this behalf shall forthwith return the subsequent order to

the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other

process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be,

while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in

receipt of any salary or allowances payable out of the Consolidated Fund of India

or the Consolidated Fund of the State or the funds of a railway

company or local authority or corporation or Government company in India; and the appropriate Government or the railway company, or local

authority or corporation or Government Company, as the case may be, shall be liable for any sum paid in contravention of this rule.

5. The authority to consider which portion of the salary of the judgment-debtor is liable to be attached is the Court dealing with the Execution

Petition. On such an order being passed, the Court shall direct the disbursing officer to withhold the attachable portion of the salary from the salary

of the judgment-debtor. The disbursing officer shall withhold the attachable portion of the salary as ordered by the Court and remit the same to the

Court. The expression used in clause (a) of sub-rule (1) of Rule 48 of Order XXI of the CPC is ""remit to the Court the amount due under the

order, or the monthly installments, as the case may be"". Sub-rule (1) of Rule 48 of Order XXI CPC authorizes the Court to pass an order as to

what amount shall be withheld from the salary or allowances of the judgment-debtor ""either in one payment or by monthly installments as the Court

may direct"". Sub-rule (2) of Rule 48 of Order XXI CPC empowers the disbursing officer to return the order served on him to the Court together

with a full statement of all the particulars of the existing attachment, only in cases where the attachable portion of the salary or allowances is already

being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment. The disbursing officer in such cases is

expected to inform the Court that the attachable portion of the salary of the judgment-debtor has already been withheld and remitted to a Court in

compliance with an order passed by the Court. The disbursing officer is not given the authority to sit in judgment over the order passed by the

executing court or to overrule the order of the Court. The disbursing officer has no jurisdiction to pass an order that so much of the salary as

ordered to be attached is not liable to be attached or that only the portion as determined by the disbursing officer is liable to be attached. He is

expected to obey the orders of the Court. He cannot pass an order and bypass the order passed by the Court. At the same time, if the salary of

the judgment-debtor is already under attachment as per a previous order passed by the Court, the disbursing officer is bound to inform the Court

about the same. This is intended for the purpose of protecting the interests of the judgment-debtor that only the attachable portion of his salary alone is attached. The Court passing the order of attachment may not be aware of a previous order of attachment passed by another Court. It may also happen that the same Court may pass orders in two different cases attaching the salary of the same judgment-debtor, without being informed of the order passed by it earlier. The decree-holder also may not be aware of the attachment salary of the judgment-debtor in another case. Only the disbursing officer who is expected to disburse the salary to the judgment-debtor would know about the various orders passed by the Courts and the nature thereof. That is why, the disbursing officer is given the authority to inform the Court as provided under sub-rule (2) of Rule 48 of Order XXI CPC. The power given to the disbursing officer to intimate the Court under sub-rule (2) cannot be taken as an authority to pass an order which would nullify the order passed by the Court. Sub-rule (3) of Rule 48 makes the position clear that the appropriate Government or the other authority mentioned therein shall be liable for any sum paid to the judgment-debtor in contravention of Rule 48. The only exception is where the disbursing officer intimates the Court under sub-rule (2) of Rule 48 that the salary of the judgment-debtor is already under attachment in pursuance of a previous and unsatisfied order of attachment. In the present case, the disbursing officer defied the orders passed by the Court. He passed an order for deducting the salary to a lesser extent than what was ordered by the Court. The decree-holder is not bound by such act of the disbursing officer. The decree-holder is entitled to the benefit of the order passed by the executing court. What steps should be taken to recover the balance as provided in sub-rule (3) of Rule 48 would be decided by the executing court. There is no ground to interfere with the order passed by the Court.

The Civil Revision Petition is, accordingly, dismissed.