
(2019) 04 BOM CK 0038

In the Bombay High Court

Case No : Criminal Revision Application No. 202 Of 2018

Bhagwant

APPELLANT

Vs

Radhika

RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Pensions Act, 1871 — Section 11

Citation : (2019) 04 BOM CK 0038

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : P.K. Mishra, S.J. Kadu

Final Decision : Disposed Off

Judgement

M.G.Giratkar, J

1. Heard. ADMIT. Heard finally by consent of learned counsel Shri P.K.Mishra for the applicant/husband and learned counsel Shri S.J.Kadu for the non-applicant/wife.

2. Learned counsel for the applicant/husband submitted that learned Magistrate exceeded its jurisdiction by passing order of attachment of pension. He submitted that before retirement, the applicant/husband was getting salary of Rs.1,53,000/- per month and after retirement he is getting pension of Rs.72,000/- per month. He further submitted that the applicant/husband is not in a position to pay Rs.30,000/- per month to his wife as maintenance. Learned counsel pointing out Section 11 of the Pensions Act, 1871 submitted that as per the said Section, pensions cannot be attached. He submitted that order of learned Magistrate directing the applicant/husband to pay interim maintenance at Rs.30,000/- per month to the non-applicant/wife is perverse one. He submitted that Rs.30,000/- as maintenance is exorbitant. Whereas, he submitted that at the most it should be at Rs.20,000/- per month. Lastly, learned counsel for the applicant/husband submitted the learned Magistrate wrongly passed

order below Exhibit 5 without giving an opportunity of hearing. Hence, he prayed to allow the present revision application.

3. Learned counsel Shri S.J.Kadu for the non- applicant/wife submitted that pensions can be attached for payment of maintenance amount. He submitted that the applicant/husband is well settled person having sufficient means and is getting Rs.72,000/- per month as pension. He pointing out cross-examination of the applicant-husband submitted that the applicant/husband received Rs.20.00 lacs as pensionary benefits. He is residing at Amravati in his own house. He purchased a row house at Nagpur. The said admission made by the applicant/husband shows that the applicant/husband can pay maintenance at Rs.30,000/- per month to his wife. Nobody is dependent on him. Hence, the present revision is liable to be dismissed.

4. Learned counsel Shri P.K.Mishra for the applicant/husband pointed out Section 11 of the Pensions Act, 1871 and submitted that pensions cannot be attached. The said Section 11 is reproduced herein below:

"11. Exemption of pension from attachment.- No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance.

shall be liable to seizure, attachment or sequestration by process of any Court [***] at the instance of a creditor, for, any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

[This section applies [***] also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma.]

[a] The words "in Part A States and Part C States" were omitted by S.2 A.L.O., 1956 (1-11- 1956).

[b] Inserted by A.O., 1937 (1-4-1937).

[c] That is, on or after 1-4-1937."

The above said Section shows that in civil disputes pensions cannot be attached at the instance of creditors.

Commentary relied on by learned counsel for the applicant/husband at serial No.16 under head of attachment shows that, "maintenance allowance granted to wife cannot be considered as debt - She is not a creditor hence exemption under S.11 cannot be granted to husband. (1985)87 Punk LR 682 : (1985) 12 Cri LT 219". The said commentary itself shows that pensions can be attached to recover amount of maintenance. Hence, the stand taken by learned counsel for the applicant/husband that pensions cannot be attached is not digestible.

5. Having heard the submissions made by learned counsel for the parties, it appears that the applicant/husband is retired and getting pension. The wife is

also doing beauty parlour. The maintenance amount at Rs.30,000/- per month granted by learned Magistrate appears to be exorbitant. Pending disposal of domestic violence proceedings before learned Magistrate, at this stage amount of Rs.20,000/- per month towards interim maintenance appears to be proper. Hence, following order is passed.

ORDER

(i) The criminal revision application is partly allowed.

(ii) Order of interim maintenance is maintained. However, amount at Rs.30,000/- per month is modified.

(iii) Instead of Rs.30,000/- per month, the applicant/husband shall pay Rs.20,000/- per month towards interim maintenance to his wife during the pendency of D.V.Act proceedings.

(iv) The order of attachment of pension is hereby quashed and set aside subject to the applicant/husband clears all arrears of maintenance within a period of one month from today.

(v) Learned Magistrate is directed to decide the Criminal Application No.254/2016 pending before it within a period of 3 months from the date of receipt of writ of this order.

The criminal revision application stands disposed of in aforesaid terms.