
(2003) 06 KL CK 0024
In the High Court Of Kerala
Case No : W.R. (C) No. 16329 of 2003

Bhargavan Pillai

APPELLANT

Vs

Special Dy. Tahsildar

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(1)
Kerala Revenue Recovery Act, 1968 — Section 2, 71, 80

Citation : (2004) 1 BC 324 : (2003) 3 KLT 753

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Subash Chandra Bose, for the Appellant; Raju Joseph, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner, who is a driver employed with KSRTC is challenging revenue recovery proceedings initiated wide Exts.P2, P4 and P6 for recovery of arrears of loan amount defaulted by the debtors for whom petitioner was a surety. The recovery proceedings initiated against the petitioner is attachment of salary through the employer namely, KSRTC. The challenge is confined to recovery proceedings by way of attachment of salary through employer, KSRTC over the limits prescribed by Section 60(1) of the CPC read with Section 80 of the Revenue Recovery Act. I heard the counsel for the petitioner and the Standing counsel for the KSFE. While the contention of the petitioner is that Section 60(1)(i) is applicable by virtue of operation of Section 80 of the Revenue Recovery Act and petitioner's salary should not be attached over the limits prescribed u/s 60(1)(i) that too, only within the limited period, the standing counsel appearing for KSFE has submitted that petitioner had stood as surety for three loans taken by three individuals for Rs. 40,000 and Rs. 50,000 each knowing well that in the event of default, petitioner's salary will be subject to recovery proceedings and even though there is no specific agreement, petitioner has virtually waived his right u/s 60 of the CPC and he cannot raise his objections in recovery proceedings. His further contention is that the scope of the

suretyship agreement itself is an undertaking by the surety to pay the debts in the event the debtor defaults. Therefore according to him the petitioners cannot be permitted to raise the objection against attachment through the employer on account of default by the debtors.

2. Another contention raised by the standing counsel is that much of the recoveries are on account of debts payable by the Co-operative Societies and other institutions, Provident Fund etc., which cannot be taken into account for the purpose of fixing the gross salary with reference to which recovery is permissible assuming Section 60(1)(i) limitations apply.

3. A further contention raised by the standing counsel is that the application of Section 60(1)(i) of CPC is by virtue of operation of Section 80 which applies only for recovery of public revenue due under land and the debt due to financial enterprise does not answer the description of this as defined u/s 2(j) of the Revenue Recovery Act. The contention of the counsel for the petitioner on the other hand is that Section 80 applies to all proceedings initiated under Revenue Recovery Act and recovery proceedings initiated pursuant to notification for recovery of arrears due to KSFE pursuant to Notification S.R.O.250/70 issued u/s 71 of the RR Act is also covered by Section 80 and according to him, the limitation of Section 60(1)(i) of CPC squarely applies to all recovery proceedings initiated under the Revenue Recovery Act irrespective of the nature of liability sought to be recovered and the beneficiary of such amounts.

4. The recovery proceedings are initiated for recovery of arrears due from KSFE by virtue of Government Notification S.R.O.250/70 issued u/s 71 of the Revenue Recovery Act. Section 71 of the Revenue Recovery Act under which notification is issued reads as follows.

"The Government may by notification in the Gazette declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person of class of persons to any specified institution of any class or classes of institutions and thereupon all the provisions of this Act shall be applicable to such recovery".

5. It is very clear from the above provision that once revenue recovery proceedings are initiated for recovery of any amount pursuant to notification issued all the provisions of the Revenue Recovery Act shall apply to such proceedings. Section 80 specifically provides for attachment of salary and debts of the defaulters. It is specifically provided in Section 80 of the Revenue Recovery Act that:

"The salaries or allowances and debts due to a defaulter may be attached and realised for the recovery from him of any arrear of public revenue due on land in the manner and to the extent provided for attachment and realisation of debts and salaries in the Code of Civil Procedure, 1908 (Central Act 5 of 1908)".

6. It is to be noted that by virtue of Section 80, the manner and extent provided

under CPC are squarely made applicable to all recovery proceedings under Revenue Recovery Act. There is no dispute that Section 60(1)(i) provides very strict limitations for attachment of salary such as period for which continuous attachment can be claimed and the extent of attachment whereunder the first Rs. 1000 and two-third of the balance are impugned from attachment. Therefore the ceiling provided in Section 60(1)(i) for attachment of salary and period prescribed thereon are part of public policy and is to protect employees who happen to be debtors. The statutory minimum left to the employee is for survival after attachment failing which he will not be able to even continue in employment. No distinction is there for the application of Section 60(1)(i) depending on the nature of the debt. Therefore whether the amount sought to be recovered is debt decreed by court or whether the amount is public revenue due on land as defined u/s 2(j) of the Act or whether the amount due is for any financial institution of any agency which have been authorised to recover the amount in exercise of power u/s 71 of the Revenue Recovery Act, the same do not make any difference as regards the applicability of Section 60(1)(i) which is made applicable to all proceedings under the Revenue Recovery Act. Therefore I do not think the contention of the standing counsel for the KSFE that Section 60 read with Section 60(1)(i) applies only to public revenue due on land can be accepted. If such an interpretation is there the very objection of the limit on attachment of salary and protection given to the employees u/s 60(1)(i) of CPC will be defeated. Therefore I am of the view that ceiling of the attachment u/s 60(1)(i) applies to all kinds of revenue recovery irrespective of the nature of debt sought to be recovered under beneficiary for whom recovery is taken. The protection claimed by the petitioner against attachment over the limits proscribed u/s 60(1)(i) of CPC by virtue of Section 80 of the Revenue Recovery Act is sustainable. However limitations should be with reference to gross salary and to the net salary after all deductions including recoveries for other loans. The respondents will continue recovering from petitioner's salary subject to limits as above.