

(1950) 01 CAL CK 0018
In the Calcutta High Court
Case No : Civil Rule No. 1820 of 1949

Dominion of India and Another	Vs	APPELLANT
Ashutosh Das and Others		RESPONDENT

Date of Decision : 04-01-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 51, 60
Provident Funds Act, 1925 — Section 3(1)

Citation : AIR 1950 Cal 212 : 54 CWN 254

Hon'ble Judges : Roxburgh, J

Bench : Single Bench

Advocate : Bhabesh Narayan Bose, for the Appellant; Amarendra Narain Bagchi, for the Respondent

Judgement

Roxburgh, J.—This is a Rule obtained at the instance of the Dominion of India representing the East Indian Railway Administration and the Divisional Accounts Officer, E.I. Rly., Asansol, against an order of a Munsif of Burdwan, dated, 25th August 1949, appointing a Receiver in the following terms:

"In view of the circumstances it is considered just and proper that the entire provident fund money of the judgment-debtor lying in the hand of the Divisional Accounts Officer, Asansol, do vest in the Receiver. The Receiver shall deposit the entire sum in Court. The judgment-debtor shall get the balance of the money after deduction of the decretal dues and costs, receiver's fees and incidentals."

2. The circumstances of course were that the decree-holder was unable to attach the provident fund money in question as the judgment debtor at the time was still in service. u/s 3(1), Provident Funds Act No. XIX [19] of 1925,

"a compulsory deposit in any Government or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and

neither the Official Assignee nor any Receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such compulsory deposit."

3. The learned Munsif, however, thought that it was just and proper (following the terms of Order 40, Rule 1) that these circumstances should be avoided by the simple device of appointing a Receiver so that instead of the Court sending its own order of attachment to the authorities, the Receiver would write a letter to them to pay the money in question to him and he was then to deposit it in Court. Manifestly it was most unjust and improper in the circumstances in my opinion to appoint a Receiver for that purpose. The appointment of a Receiver in execution proceedings has been described as a form of equitable relief which is granted on the ground that there is no effective remedy by execution at law. Surely it is an improper use of that equitable remedy to employ it to avoid a very definite bar created by statute law to achieving the very object for which the Receiver is appointed.

4. My attention has been drawn to two cases arising out of the same suit, *Baramdeo v. Mrs. Fay Smith*, 44 CWN 636, in which it was held that there was no bar to the appointment of a Receiver in respect of the provident fund money. The money in that case was the provident fund money of a deceased person and was in the funds of the Calcutta Tramways Company Limited. There were special features in the case in that the rules of the fund were not such as to bring in the operation of Section 3(2) and Section 5(1), Provident Funds Act. In the latter case reference was made by Mc. Nair J. to the case of AIR 1925 176 (Privy Council), as an authority for the pro-position that a Receiver might be appointed in respect of a right to future maintenance, although attachment of that right was barred u/s 60(n), Civil P. C. That case has been discussed by Beaumont, C. J., as he then was, in the case of the Secretary of State for India Vs. *Bai Somi*, in which he held that even if the decision in question did amount to a decision that there could be jurisdiction to appoint a Receiver in the particular case, this ought not be done in the particular circumstances. He also pointed out, what is sufficiently obvious, that many payments in addition to future maintenance are exempted from attachment u/s 60, Civil P. C. and if these could be reached in execution by the appointment of a Receiver the protection afforded by the section is to a great extent lost.

5. In my opinion, therefore, in the present case, the trial Court should have refused to direct the appointment of a receiver, as the only object of such appointment was to avoid the bar created by Section 60(k), Civil P. C., and Section 3(1), Provident Funds Act, 1925.

6. The Rule is accordingly made absolute and the order appointing the Receiver is set aside.

7. The petitioners will have costs of this Rule.