

(2009) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1323 of 2008

Gudapati Hanumaiah

APPELLANT

Vs

Y. Lakshminarasamma and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46, Order 21 Rule 52, 60(1)
Payment of Gratuity Act, 1972 — Section 13, 4, 4(1)
Provident Funds Act, 1925 — Section 2, 3, 4

Citation : AIR 2009 AP 129 : (2009) 3 ALD 330 : (2009) 3 ALT 281 : (2010) 2 CivCC 232 : (2010) 8 RCR(Civil) 2201

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : M. Raja Malla Reddy, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the counsel for the petitioner. Though notice is served on the respondents, there is no representation on their behalf.
2. Aggrieved by the order - dated 10.10.2007 passed by the court of Principal Senior Civil Judge, Kothagudem in E.P. No. 165/2005 in O.S. No. 29/2003, in dismissing the execution petition, the decree-holder filed the present revision.
3. From the material available on record, it could be seen that the revision petitioner filed the suit in O.S. No. 29/2003 on the file of the Principal Senior Civil Judge, Kothagudem for recovery of an amount of Rs. 1,29,300/- along with interest and costs against the respondents herein and the suit was decreed for an amount of Rs. 1,51,113/-. The 1st respondent herein, is the mother of late Venkateswarlu and the 2nd respondent is his wife, and respondents 3 and 4 are his daughters. Venkateswarlu worked as U.D.C. in K.T.P.S. Palancha and died on 4.10.2001. Therefore, the judgment-debtors, who are the legal heirs of late Venkateswarlu, became entitled to his death-cum-retiral benefit. As the decretal amount was not paid, the decree-holder, earlier filed E.P. No. 105/2005 in O.S.

No. 29/2003 under Order 21, Rule 46 of C.P.C. for attachment of the amounts, lying to the credit of late Venkateshwarlu and accordingly direction was given for withholding of the amount by the authorities.

4. Earlier to the filing of the suit by the decree-holder in O.S. No. 29/2003, alleging that the judgments-debtors 2 to 4 refused to give share to the 1st judgment-debtor, who is the mother of late Venkateswarlu, she filed suit in O.S. No. 104/2001 on the file of the same court i.e., Principal Senior Civil Judge, Kothagudem, for partition, for share in the immovable property and she also filed I.A. No. 247/2002 in O.S. No. 104/2001 to direct the K.T.P.S. Palancha authorities, to deposit the retrial benefits i.e., an amount of Rs. 1,45,000/- of late Venkateshwarlu, to the credit of the suit and accordingly it was allowed. Since the amount was deposited to the credit of the suit in O.S. No. 104/2001, the present decree-holder had withdrawn the earlier E.P. No. 105/2005 in O.S. No. 29/2003, as not pressed.

5. As the decretal amount could not be realized, the decree-holder filed the present E.P. No. 165/2005 in O.S. No. 29/2003, under Order 21, Rule 52 of C.P.C., for attachment of an amount of Rs. 1,45,000/- lying in the credit of the suit in O.S. No. 104/2001. The said amount represent the gratuity, G.P.F. and L.I.C. and other compulsory deposits of late Venkateshwarlu. The court below, held that the said amount is exempted from attachment u/s 60(1)(g)(k) of C.P.C. and that unless it reaches the hands of the judgment-debtors for enjoyment, it cannot be attached. It was further held that since the amount is lying to the credit of the suit and as the amount has not reached the hands of judgment-debtors, it retains the character u/s 60(1)(g)(k) of C.P.C. and hence cannot be attached. Accordingly the execution petition was dismissed. Aggrieved by the same, the present revision is filed.

6. The learned Counsel appearing for the petitioner contended that the court below has not properly appreciated the issue raised by the decree-holder. He contended that the amount of Rs. 1,45,000/- belongs to the judgment-debtors and at their instance the amount was kept in deposit to the credit of the suit in O.S. No. 104/2001, filed by the 1st judgment-debtor who is the mother of late Venkateshwarlu and it can be said that the said amount is in the hands of the judgment-debtors. He further contended that as the said amount is deposited to the credit of the suit, it will not represent the retrial benefits of the deceased Venkateswarlu and hence liable for attachment. Relying on the judgment of the Division Bench of the Kerla High Court in Sathyavathy Vs. Bhargavi (died), Vijayan and Another, he contended that the gratuity amount, which is payable to the legal representatives of late Venkateswarlu, lost its character u/s 60(1)(g) of C.P.C. after the death of Venkateshwarlu and hence liable for attachment in execution of a decree. With these averments, he sought to set aside the impugned order and to allow the E.P. for attachment of the amount lying to the credit of the suit in O.S. No. 104/2001.

7. From the above facts and circumstances, there is no dispute that the amount

of Rs. 1,45,000/- represent the gratuity, G.P.F., L.I.C. and other compulsory deposits of late Venkateshwarlu and they are exempted from attachment u/s 60(1) of C.P.C. and since the judgment-debtors are the legal representatives of late Venkateshwarlu, they are entitled for the said amount. Pursuant to the orders in I.A. No. 247/2002 in O.S. No. 104/2001, the said amount is deposited to the credit of that suit and it was not actually paid to the judgment-debtors.

8. There is no dispute that the gratuity, provident fund and other compulsory deposits, payable to an employee are exempted from attachment in execution of a decree u/s 60(1) (g),(k), (k-a) of C.P.C. In the present case, it is to be noticed that the employee who is actually entitled to the said amount died and only his legal representatives, who are the judgment-debtors, became entitled for the said amount. Therefore, the question that arises for my consideration is, whether the gratuity, provident fund and other compulsory deposits, which the employee is entitled to and to which exemption u/s 60(1) of C.P.C. is available, still retains their character, after the death of the employee and when the said amount becomes payable to his legal representatives?

9. To consider the above issue, it is necessary to note relevant Clauses (g), (k) of Section 60(1) of C.P.C. and also Clauses (kk) and (kkk) and Explanation 2-A, which were added by way of CPC (Amendment) Act 104 of 1976. The said provisions are extracted as under

60. Property liable to attachment and sale in execution of decree:

(1) ...

Provided that the following particulars shall not be liable to such attachment or sale namely:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) stipends and gratuities allowed to pensioners of the government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette, by the Central Government or the State Government in this behalf, and political pension;

(gg) pension granted or continued by the Central Government, the Government of the pre-organized Hyderabad State or any other State Government on account of past service or present infirmity or as a compassionate allowance; and

(h) ...

(i) ...

(j) ...

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(kk) amounts payable under policies issued in pursuance of the Rules for the Andhra Pradesh Government Life Insurance Department.:

(kkk) amounts payable under the Andhra Pradesh State Employees Family Benefit Fund Rules"

(k-a). all deposits and other sums in or derived from any fund to which the Public Provident Funds Act, 1968 (23 of 1925), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(k-b).

(k-c) ...

(l) ...

(m) ...

(n) ...

(o) ...

(p) ...

Explanation I; ...

Explanation II...

Explanation 2-A: Where any sum payable to a Government servant is exempt from attachment under the provisions of clauses Clause (kk) and (kkk), such sum shall remain exempt from attachment notwithstanding the fact that owing to the death of the Government servant it is payable to some other person.

Explanation (III)..

Explanation IV...

Explanation VI...

[(1-A) ...

(2)...

10. From a reading of the above provisions, it is clear that under Sub-section (1) Clause (g) stipends and gratuities allowed to pensioners of the Government or

local authority are exempted; and under Clause (k), all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act 1925 for the time being applies, insofar as they are declared by the said Act not to be liable to attachment, are exempted from attachment. Therefore, it is clear that gratuities and provident fund cannot be attached and they are exempted from attachment. As per the Clause (kk), which is inserted after Clause (k) to Sub-section 1 of Section 60 by way of Amendment, the amounts payable under the policies issued in pursuance of the Rules for the Andhra Pradesh Government Life Insurance Department are exempted from attachment. Further, under Clause (kkk), amount payable under the Andhra Pradesh State Employees' Family Benefit Fund Rules", is also exempted from attachment.

11. From a further perusal of explanation 2-A, which was inserted by the CPC (Amendment) Act, 1976, it is clear that where any sum payable to a Government servant is exempt from attachment under the provisions of Clauses (kk) and (kkk), such sum shall remain exempt from attachment notwithstanding the fact that owing to the death of the Government servant, it is payable to some other person.

12. Therefore, from the above it is clear that the amount payable under the policies issued in pursuance of the Rules for the Andhra Pradesh Government Life Insurance Department, and amounts payable under the Andhra Pradesh State Employees Family Benefit Fund Rules, are exempted from attachment, even if the Government servant dies and becomes payable to some other person.

13. With regard to gratuity, as noted above, the said amount payable to a government servant is exempted from attachment u/s 60(1)(g) of C.P.C. In the present case, the government employee died and the said amount became payable to his legal representatives and the question is, whether the same retains its character after the death of the deceased. In this regard it is necessary to note Sections 4 and 13 of Payment of Gratuity Act, 1972 (for short "the Act"). The said provisions, to the extent relevant, are extracted as under for ready reference:

Section 4: Payment of gratuity: (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary whether the termination of the employment of any employee is due to death or disablement;

Provided further that in the case of death of the employee, gratuity payable to

him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

(2)...

(3)...

(4)...

(5). .

(6)...

Section 13. Protection of gratuity: No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation port, railway company or shop exempted u/s 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

14. From a reading of above extracted Section 4(1) of the Act, it is clear that the gratuity is payable to an employee, on his termination of employment; or on his superannuation or; on his retirement or resignation, or on his death or disablement due to accident or disease. Apropos to the present facts, the gratuity became payable to the legal representatives of the employee owing on his death as per Clause (c) of Sub-section (1) of Section 4 of the Act. The second proviso to Section 4(1) of the Act, further makes it clear that in case of death of the employee, gratuity payable to him shall be paid to his nominee and if no nomination has been made, other procedure has been prescribed. And protection from attachment of gratuity is provided u/s 13 of the Act. Therefore, a combined reading of Sections 4(1) and 13 of the Act, makes it clear that the gratuity, which will be paid to an employee, on his retirement or resignation; and in case of his death or disablement, due to accident or disease, to his nominees, is totally exempted from attachment in execution of any decree or order of any civil, revenue or criminal court. In other words, it can be stated in unequivocal terms that the gratuity amount payable to an employee or to his legal representatives owing to his death or disablement due to accident or disease, is exempted from attachment.

15. Under similar circumstances, a learned single Judge of this Court in the decision reported in D. Vimala Vs. Canara Bank, Mettuguda, Secunderabad, considering Section 60(1)(g) and Sections 4(1) and 13 of Payment of Gratuity Act and the judgments of the apex court reported in Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, and Calcutta Dock Labour Board and Another Vs. Smt. Sandhya Mitra and Others, held that the gratuity amount payable to legal representatives of deceased employee is not liable for attachment and that the gratuity does not lose its character as such, even if it

becomes payable to legal representatives of deceased employee and the immunity to gratuity from attachment exists not only when it is payable to employee but also when it is payable to his legal representatives after his death. In the said judgment, the learned single Judge of this Court; considering the judgment of the Division Bench of the Kerala High Court, wherein it was held that the gratuity which has become payable to the legal representatives of the deceased employee is not exempt from attachment u/s 60(1)(g) of the Act; held that the decisions of the Apex Court were evidently not brought to the notice of the Kerala High Court, when the matter was argued. The relevant portion of the judgment of the learned single Judge of this Court, while considering Sections 4(1) and 13 of the Act, is extracted as under for ready reference:

6. Apart from this, it is to be seen that Section 4(1) of the Payment of Gratuity Act provides that gratuity shall be payable to an employee (a) on his superannuation or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease. It is clear from such provisions that gratuity shall be payable to an employee directly on his superannuation or on his retirement or resignation under Clauses (a) or (b) of Section 4(1) and to his legal representatives in case of his death as per Clause (c) of Section 4(1) of the Payment of Gratuity Act. The second proviso to Section 4(1) provides that in case of the death of the employee, gratuity payable to him shall be paid to his nominee or if no nomination has been made, to his heirs. Section 13 of the Payment of Gratuity Act provides that no gratuity payable in this Act... shall be liable to attachment in execution of any decree or order of any Court. In the present case, the gratuity amount lying with the Deputy Controller of Stores, South Central Railway, Secunderabad is payable under the Payment of Gratuity Act to the deceased-second Judgment-Debtor during his life time and it became payable to his wife and other legal representatives after his death in view of the provisions of Section 4(1) of the Payment of Gratuity Act which was already referred to above. Inasmuch as the said gratuity amount is payable under the Payment of Gratuity Act to the legal representatives of the deceased- judgment-Debtor No. 2 after his death, such amount will not lose its character as such gratuity amount is totally exempt from attachment in view of the protection granted u/s 13 of the Payment of gratuity Act. Therefore, in view of such circumstances, the gratuity amount which became payable to the present revision petitioner and the other legal representatives of the deceased-Judgment Debtor No. 2 after his death and which was sought to be attached in the present case is not liable for attachment in view of the provisions of Section 60(1) (proviso)(g), C.P.C. and also Section 4 r/w Section 13 of the Payment of Gratuity Act and the impugned orders of the lower Court cannot, therefore, be sustained.

16. In view of the above provisions u/s 60(1)(g) and Sections 4(1) and 13 of the Payment of the Gratuity Act, and also in view of the foregoing discussion and also the judgment of the learned single Judge of this Court, I am of the view that the gratuity, which became payable to the judgment-debtors owing to the death of the Government servant, is exempted from attachment in execution of a

decree.

17. In view of the above discussion, the point framed, is answered in the affirmative.

18. However, the Apex Court in the decision reported in *Union of India v. Jyoti Chit Fund and Finance* (supra) held as under:

9 ...A bare reading of Sections 3 and 4 of the Provident Funds Act 1925, read with Section 2(a) of that Act, will convince anyone that attachment of amounts bearing their description are prohibited. It will be a gross violation of legal mandates involving public interest, if, in the teeth of such injunction, an attachment should still be ordered by a Court.

10 ...Moreover, Section 60(1), provisos (g) and (k), leave no doubt on the point of non-attachability. The matter is so plain that discussion is uncalled for.

11. We may state without feat of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee.... A bare reading of *State of Punjab Vs. Khemi Ram*, makes the proposition feel-proof that so long as the amounts are Provident Fund dues then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise, the nature of the dues is not altered.

19. From the above judgment of the Apex Court it is clear that the amounts representing the provident fund and other compulsory deposits, which a Government servant is entitled to, are exempted from attachment until they are actually paid to the government servant who is entitled to on retirement or otherwise and the natures of the dues, is not altered.

20. In another judgment, in *Bandi China Ramalinga Reddy @ China Ramalingaiah Vs. Nalluri Srinivasulu and Another*, a learned single Judge of this Court, considering the above judgment of the Apex Court (3 supra) held as under:

7 ...Therefore, so long as pension, gratuity, etc., are not received by the beneficiary only they are exempt from attachment in view of Section 60(1)(g) CPC. When once they reach the hands of the employee concerned, the exemption ceases to operate.

21. In view of the above provisions and discussion and the judgments of this Court and the Apex Court, I am of the view that the amount of Rs. 1,45,000/- representing the gratuity, provident fund, insurance and other compulsory deposits of the deceased employee, which the judgment-debtors are entitled to, cannot be attached, unless the same is actually received by the judgment-debtors.

22. The judgment of the Kerala High Court referred to (1) supra is not applicable to the facts of the present case, as already noted above, a learned single Judge of this Court in the decision cited 2 supra held that the decisions of the Apex

Court were not brought to the notice of Their Lordships of Kerala High Court. Further, it is also to be seen that the relevant provisions under the Act, were also not brought to the notice of the Division Bench of the Kerala High Court. Hence, in these circumstances, the decision of the Kerala High Court, cannot be relied upon.

23. Apart from the above, as per the submission of the counsel for the petitioner, the suit filed by the 1st judgment-debtor for partition and for share in the retrial benefits of the deceased, was dismissed. In these circumstances, the decree-holder may take appropriate steps for attachment of the amount after the said is actually paid to the judgment-debtors.

24. For the foregoing reasons, I do not find any merit in the revision and the same is dismissed. No costs.