(1953) 03 GUJ CK 0009

In the Gujarat High Court

Case No : Civil Revision Applns. No''s. 4, 5 and 7 of 1953

Harji Malla and Others APPELLANT

Vs

Karsanji Vakhatchand and Others RESPONDENT

Date of Decision : 21-03-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Constitution of India, 1950 — Article 226(1), 227(1)
Payment of Wages Act, 1936 — Section 2

Citation : (1953) 03 GUJ CK 0009

Hon'ble Judges : Chhatpar, J

Bench : Single Bench

Advocate : G.B. Joshi, in Civil Revn. applns. Nos. 4, 5 and 7 of 1953, for the Appellant; V.P. Khakhar in Civil Revn. Applns. No. 5 of 1953, for the Respondent

Final Decision : Dismissed

Judgement

Chhatpar, J.—The above three revision applications are being dealt with together, as the point involved is the same, which is whether the

bonus payable to the judgment-debtors should be considered as ''wages'' to be exempt from attachment u/s 60, CPC The three applicants are the

employees in Shri Amarsinhji Mills Ltd., Vankaner, and it is not disputed that they are labourers. The bonus for the years 1949, 1950 and 1951 is

payable to them, which is sought to be attached. The opponents in the three matters are judgment-creditors. The learned trial Court Judge seems

to have been of the view that bonus was of the same nature as stipends and gratuities exempted under Cl. (g) of the first proviso to Section 60, and

as this clause protects only stipends and gratuities allowed to Government servants, the bonus awarded to the judgment-debtors was not exempt

from attachment. He did not seriously consider the question whether bonus could come within the word ''wages'' under Cl. (h), which is really the

relevant clause of the proviso. The learned Judge therefore ordered execution to proceed against the judgment-debtors, who have now come

before the High Court in revision.

2. Mr. Joshi the learned advocate for the applicants contends that bonus awarded to Mill labourers should be construed as part of their legitimate

remuneration, although the amount may vary from time to time. As the judgment-debtors are admittedly labourers, such bonus would be

considered as wages. He has referred to the definition of ''wages'' in the Payment of Wages Act. Section 2(vi) defines ''wages'' as meaning

all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were

fulfilled, be payable whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or

otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional

remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his

employment, but does not include etc.

He has also relied upon a decision of the Bombay High Court in - Jivan Lal Kandas Vs. Ramtuji Bhaiji and Another, , where it was held that bonus

agreed to be paid could come within the expression ''wages'' within the meaning of Section 60. On the other hand, Mr. Khakhar the learned

advocate for the judgment- creditor in - ''C.R.A. No. 5 of 1953'', has argued that bonus is ex gratia payment depending upon the sweet will of the

employer and cannot be considered as wages, there being no legal obligation on the part of the employer to pay it. He has further contended that in

any case the arrears of bonus cannot be exempt from attachment relying upon the observations of the Supreme Court in - The Union of India

(UOI) Vs. Hira Devi and Another, .

3. The learned Civil Judge has not taken any evidence as to the nature of the employment of the judgment-debtors with Shri Amarsinhji Mills Ltd.,

as he should- have done, but fortunately, we have on our record an award by the Industrial tribunal between this very same Mill and its employees,

wherein, the Mill was made to pay the bonus for the year 1947 not by way of charity or exgratia payment but as legitimate obligation out of the

profits made by the Mill. This award was challenged by the Mill, by a petition under Articles 227(1) and 226(1) of the Constitution of India in this

Court in Civil Misc. Appln. No. 1 of 1950. The application was withdrawn. The award was also published in the Saurashtra Government Gazette

of 9-12-1949 at P. 888. Similar awards by Industrial tribunals have been made during recent years. So that the original ex gratia nature of the

payment of bonus has, during recent years owing to development of industry and Industrial and Labour legislation, come to mean a part of the

legitimate remuneration which the labourers are entitled to look to as additional compensation for their services, although such compensation may

be of a fluctuating nature. Whether it adds to their pay to make up to a living wage in view of the high prices prevailing for some years or as a

legitimate participation in the profits of the Company, it is nevertheless consideration or reward for labour done. Halsbury''s Laws of England

(Hailsham Edition), Vol. 14 at p. 650 define ""wages"" as

Any money or other thing had or contracted to be paid, delivered or given as a recompense, reward, or remuneration for any labour done or to be

done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, is deemed to be the wages of such labour.

I have therefore no hesitation to come to the conclusion that bonus paid to such kind of labourers employed in a Mill from time to time should be

considered as part of their wages. I therefore hold that the bonus in these matters was exempt from attachment.

4. Mr. Khakhar has also raised a further point that although the bonus may be exempt from attachment, arrears of bonus would not be exempt on

the ground that the amounts of bonus ceased to be such and assumed the character of debts. But the first Explanation to Section 60 makes it clear

that the particulars mentioned in Cls. (g), (h) etc., are exempt from attachment or sale whether before or after they are actually payable. It is clear

from this Explanation that even after they have become payable and assumed the character of arrears, the exemption applies. The - ''Supreme

Court''s decision'', (B), was in a case where the question was not in respect of wages of a labourer but whether a receiver could be appointed of a

Provident Fund and arrears of salary of a deceased Government servant. There is a very short discussion by their Lordships of the Supreme Court

on the point in the following terms after discussing the question as regards the provident fund:

This conclusion does not, however, apply to the arrears of salary and allowance due to the judgment-debtor as they stand upon a different legal

footing. Salary is not attachable to the extent provided in Section 60, Code of Civil Procedure, Clause (1), but there is no such exemption as

regards arrears of salary. The learned Attorney-General conceded that this portion of the amount can be proceeded against in execution.

The present cases do not relate to salary nor to appointment of a receiver in execution proceedings. As first Explanation to Section 60 makes it

clear that wages are exempt from attachment and sale whether before or after they are payable, they cannot be attached as arrears in the hands of

the employer. I therefore set aside the decisions of the lower Court and hold that the amounts of bonus payable to the judgment-debtors are

exempt from attachment. In the peculiar circumstances of the present cases, I make no order as to costs. The execution applications of the

judgment-creditors will stand dismissed.