
(1938) 12 CAL CK 0010

In the Calcutta High Court

Case No : Appeal from Original Order No 69 of 1937

Imperial Bank Co-operative Society Ltd. Creditor No. 1

APPELLANT

Vs

Santosh Kumar Pal

RESPONDENT

Date of Decision : 06-12-1938

Acts Referred:

Citation : (1938) 12 CAL CK 0010

Final Decision : Allowed

Judgement

Derbyshire, C.J.—This is an appeal by a creditor against an order of the District Judge of Hooghly in Insolvency Case No. 52 of 1935. The creditor the Petitioner in the proceedings before the District Judge asked for an order upon the insolvent to pay and deposit in the Court within the first week of each month a sum of Rs. 30 or to pass such other order as the Court deemed it and proper. The Judge refused to pass the order asked for or any other order. The insolvent, Santosh Kumar Pal, was formerly in the employ of the Imperial Bank of India, Ltd., but retired from their employment in 1935. A short time after his retirement he was adjudicated an insolvent--whilst, the insolvent was in the employment of the Imperial Bank of India he became contributory to the Bank's pension scheme and on his retirement he became entitled to a pension under the scheme of Rs. 62-13-11 pies per month. That monthly sum has been paid to the insolvent by the Bank.

2. The creditor, Appellant herein, stated in his petition to the Judge that the insolvent had applied for his discharge, but nothing had been realised for the benefit of the creditors. He asked that Rs. 30 per month should be deducted out of the pension and kept in deposit in the Court for the purpose of ultimate distribution among the creditors; he further stated that the insolvent's family consisted of the insolvent and his wife only.

3. A copy of the Bank's Employees' Pension Fund Rules and Regulations has been laid before us and it appears from it that a deduction is made each month from the employee's salary and paid into the Pension Fund. A contribution in

respect of the employee is also made by the Bank and paid into the Pension Fund. There is also added to the Pension Fund in respect of each employee interest upon the contribution of the employee. These sums of money form part of a larger fund which is invested by the Bank and available for the payment of the employees' pensions. Certain terms are laid down in the Rules as to the conditions upon which the employees become entitled to draw pension. In this case the employee insolvent served for the period prescribed by the rules, satisfied the conditions laid down in the Rules and became entitled upon his retirement in 1935 to a pension, as stated, of Rs. 62-13-11 pies each month. Rule 12 provides:

A pension shall be regarded as only elementary and therefore not assignable. It shall ipso facto cease in the event of an assignment being made.

4. Rule 13 provides:

Pensions shall begin to accrue on the first day succeeding that of retirement and shall be payable monthly to the beneficiary personally or to his order when supported by a life certificate bearing his signature and attested by a Magistrate, Justice of the Peace or banker.

5. The Rules form the terms of the contract between the Bank and the pensioner under which the pensioner receives his pension.

6. It is contended for the Appellant creditor that as and when the insolvent pensioner receives his monthly instalment pension, that monthly instalment becomes the property of the insolvent and so vests in the Court or the receiver under the provisions of sec. 28 of the Provincial Insolvency Act and that under the Act the Court ought to have made the order asked for.

7. Sec. 28 (1) of the Act provides:

On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors.

8. Sub-sec. (2):

On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors.

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9. Sub-sec. (4):

All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub-sec. (2) shall apply in respect thereof.

10. Sub-sec. (5):

The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

11. This is a pension provided by a Bank as a result of a contract with its servants. It is not a Government pension nor one of those rights to property excepted from attachment under the proviso to sec. 60, sub-sec. (1).

12. Rule 12 of the Pension Rules in my view provides that the right to the pension shall not be assigned and in its second part makes this certain by providing that the pension shall come to an end if an assignment is made. Rule 13 however provides that the monthly instalment of a pension shall begin to accrue on the first day of retirement and that instalment shall be payable each month to the beneficiary personally or to his order. The result is that although a pensioner cannot assign his general rights to a pension under the scheme or even his right to the monthly instalment before it becomes due and payable, yet at the end of each month from the date of first accrual, that month's instalment has become due and payable to the beneficiary. The beneficiary has then, but not before, an actionable right against the Bank in respect of the monthly instalment, and that actionable right is the beneficiary's, that is, the pensioner's property. He is entitled to receive it personally or authorise some other person to receive it on his behalf. The monthly instalment of pension having then become the pensioner's property, it has been "acquired" by him even though he has not actually received it from the Bank in money and, therefore, the pensioner having become an insolvent by virtue of sec. 28, sub-sec. (4) of the Provincial Insolvency Act, the instalment vests in the Court or the receiver. The instalment having vested in the Court or the receiver, the Court is competent to make an order with regard to it in accordance with the provisions of the Provincial Insolvency Act.

13. Sec. 28 (2) provides that the property shall become divisible amongst the creditors, but that is subject to the right of the insolvent which is implicit in the insolvency laws (which are modelled on the Bankruptcy Laws of England) that the insolvent and his family should be maintained out of the moneys so coming to hand. See *In re Roberts* [1900] 1 Q.P. 122.

14. In my view, the proper order which the Court ought to have made in this case was that the insolvent should draw the monthly instalment of his pension from the Bank on the due date and that he should, on drawing the same, pay it over to the Court, being allowed to retain out of that instalment such a sum as the Court considers proper for the maintenance of the insolvent and his family during the ensuing month.

15. In my opinion this matter must go back to the learned District Judge for him to deal with it upon the lines indicated.

16. The result is that the appeal is allowed with costs--the hearing-fee being

assessed at three gold mohurs.

Nasim Ali, J.

17. I entirely agree with the order which my Lord the Chief Justice has just now made in this appeal. The pension that actually becomes payable to the insolvent at the end of a month becomes his property within the meaning of cls. 1 and 2 of sec. 28 of the Provincial Insolvency Act. This money is not exempted from attachment by sec. 60 of the CPC inasmuch as it does not come within the proviso to that section. The contention of Mr. Chakravarti on behalf of the insolvent is that by virtue of cl. 1 of sec. 60 this pension, not being saleable, cannot be attached and sold in execution of a decree. In order to substantiate his position that this pension is not saleable he relies upon r. 12 of the rules and regulations framed under sec. 31 (2) (1) of the Imperial Bank of India Act, 1920 (Act XLVII of 1920). That rule prohibits the assignment of the right to receive pension from the Bank. It does not say that after the money has become payable at the end of each month the pensioner will have no disposing power over it. On the other hand r. 13 supports the position that the sum which has already accrued due may be assigned. There is nothing therefore in sub-cl. (1) of sec. 60 of the CPC which exempts the pension that has already become payable from attachment and sale in execution of a decree. As this money does not come within sub-cl. (5) of sec. 28 of the provincial Insolvency Act, it vests in the Court and is divisible amongst the creditors.