

(1939) 06 CAL CK 0020
In the Calcutta High Court
In Re: Igustins Rohdirick

Date of Decision : 20-06-1939

Acts Referred:

Pensions Act, 1871 — Section 12

Citation : AIR 1940 Cal 192

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—This application raises an important question with regard to the position of creditors of Government pensioners who have the misfortune to be adjudicated insolvents. The facts are that the insolvent was adjudicated on his own petition on 4th July 1938. He was formerly an employee of the Posts and Telegraph Department of the Government of India, and on his retirement he was granted a monthly pension of Rs. 308 net after deduction of income tax. Prior to his adjudication he had admittedly borrowed money from the opposite party, Jagannath Panday, in whose favour he had executed a promissory note for Rs. 5000. The insolvent states in his petition that he arranged with Jagannath Panday that he should pay a certain portion of his pension month by month in liquidation of the sum previously advanced, and should deposit with Jagannath his pension pay order and pension papers. Without these documents he is unable to draw his pension from Government.

2. It appears that after the adjudication order the insolvent obtained the pension papers from Jagannath, who brought criminal proceedings against him. The criminal proceedings were abortive as the Magistrate held that the matter was one which should be dealt with by a Civil Court, and the papers were returned to Jagannath in whose custody they now are. The insolvent now applies that this Court should direct Jagannath to make over the pension papers to him. The application is made on notice to the Official Assignee. The insolvent contends that the arrangement under which he made over the papers to Jagannath is invalid and illegal because it was in contravention of Section 12, Pensions Act, 1871. u/s 11 of that Act no pension granted by Government on account of past services, and no money due or to become due on account of any such pension or

allowance, shall be liable to seizure, attachment, sequestration, by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court. u/s 12, all assignments, agreements, orders, sales, and securities of every kind made by a person entitled to any pension, mentioned in Section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, or for giving any future interest therein; are null and void. The insolvent argues that the pension papers in the hands of Jagannath are a security within the meaning of Section 12, that by reason of that Section the deposit of them by way of security is null and void, and that he is entitled to the return of the papers.

3. On the other hand, Mr. S.C. Roy, who appears for Jagannath, draws a distinction between a security and a possessory lien, and argues that what he has obtained does not fall within the former category. I do not propose to decide this question, though my inclination would certainly be to agree with the view put forward by the insolvent. The language of the Pensions Act is very wide, and in my opinion the transaction with which I am dealing is clearly one of the class of transactions which Section 12 was enacted to prevent. The difficulty in making the order for which the insolvent asks is that I consider that it is beyond my power to make it in the exercise of the insolvency jurisdiction of the Court. u/s 7, Presidency Towns Insolvency Act, the Court has power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of the property in any such case. In my opinion, although the jurisdiction given by Section 7 is extensive, only those orders can be made under the Section which are necessary for the purpose of the insolvency, that is to say, for facilitating the distribution of the assets among the creditors.

4. Mr. Majumdar for the insolvent does not disagree with this construction of the Section, but he maintains that if I make the order asked for, it will put the Court into a position to make an order under another Section of the Insolvency Act for the benefit of the creditors generally. Now, it is conceded that a pension payable by Government is not "property" of the insolvent within the meaning of Section 17, Presidency Towns Insolvency Act, which vests in the Official Assignee on the making of the order of adjudication. This is in accordance with Section 2(e) of the Act, by which "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit. It is however, said that in respect of a pension such as that payable to the insolvent an order can be made for the benefit of creditors u/s 60(2) of the Act. Section 60(1) deals with the pay and pensions of military and naval officers and of officers employed in the Civil Service of the Crown. Sub-section (2) is as follows:

Where an insolvent is in the receipt of a salary or income other than as

aforesaid, the Court may at any time after adjudication and from time to time, make such order as it thinks just for the payment to the Official Assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

5. I think it is clear that the insolvent's pension can properly be described as "income" within the meaning of Sub-section (2), but in my opinion an insuperable difficulty is created by the words "as may be liable to attachment in execution of a decree." Reference has been made to Section 53, Bankruptcy Act, 1883, which is now superseded by Section 51, Bankruptcy Act, 1914. In *In re Saunders* (1895) 2 Q.B. 424 the Court of Appeal had no doubt that u/s 53, Bankruptcy Act, 1883, there was power to order payment of a pension, which was made inalienable by Indian Legislation, to the trustee in bankruptcy of the pensioner but there is nothing in the English statute corresponding to the words in Section 60(2), Presidency Towns Insolvency Act, which I have described as causing an insuperable difficulty. In my opinion it is impossible to say that the insolvent's pension is liable to attachment in the execution of a decree; and if this is so, the Court will have no jurisdiction u/s 60(2) to order the insolvent to pay any portion of it to the Official Assignee for distribution among the creditors. Not only does Section 11, Pensions Act, exempt Government pensions from seizure, attachment or sequestration by process of any Court in British India at the instance of a creditor or in satisfaction of a decree or order of any such Court, but by Section 60(1), Proviso (g), Civil P.C., stipends and gratuities allowed to pensioners of Government are expressly rendered not liable to attachment or sale under the Section.

6. It is true that once a pension has been paid it loses its special character and becomes part of the assets of the pensioner, but all future instalments are clearly exempted from liability to attachment under the proviso I have mentioned, and it is precisely with regard to such instalments that it is suggested I have power to make an order on the insolvent in favour of the Official Assignee u/s 60(2), Insolvency Act. Unless I have power to make such an order the interests of the creditors will in no way be served by a direction on Jagannath to return the pension papers. If this is so, such a direction cannot be justified by Section 7, Insolvency Act. I come to this conclusion with some reluctance as I greatly doubt if Jagannath has any answer to a suit brought by the insolvent for the return of the pension papers. However, for the reasons I have given I have come to the conclusion that there is no power in the Insolvency Court in the circumstances to direct the return of the pension papers, and this application must be dismissed with costs.