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(2000) 10 KL CK 0024

In the High Court Of Kerala

Case No : O.P. No. 13892 of 1994

Joseph APPELLANT

Vs

Dy. Tahsildar RESPONDENT

Date of Decision : 17-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Kerala Revenue Recovery Act, 1968 — Section 80

Citation : (2000) 10 KL CK 0024

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Thomas V. Jacob, for the Appellant; L.G. Suresh Babu, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The petitioner is a retired teacher. The death cum retirement gratuity to the petitioner had not been paid. That is the grievance of the petitioner. Therefore the petitioner seeks a direction for such payment.

2. Even admittedly by the petitioner he had been a guarantor, in respect of kist dues, to some abkari contractors. They defaulted payment of kist. This resulted in revenue recovery proceedings. His salary has been attached. He had been earlier to this Court with an Original Petition. That was disposed of with a direction to the Tahsildar concerned to hear the petitioner and to pass orders. By the time the petitioner retired from service. Because of the liability arising out of attachment order of the Revenue Recovery Officer NLC was not issued. Thus the petitioner is unable to get the amount. This is the factual situation. It is contended by the petitioner that in terms of R. 3 Part III KSR liability has to be fixed. No liability has been fixed so far as the petitioner is concerned. So the gratuity shall not be withheld. This contention cannot be heard from the mouth of the petitioner who had earlier assailed the order attaching salary in O.P. 3143/89. There was a direction in the Original Petition to the Tahsildar to pass

appropriate orders after hearing the petitioner. The petitioner was heard and appropriate order was passed to attach Rs. 1529/- per month from his salary. Therefore it cannot he said that there was no quantification. More over there is an order of attachment by the Revenue Recovery Officer based on an agreement executed by the petitioner guaranteeing the kist amount. In such circumstances no proceedings under R. 3 Part III KSR is necessary to recover such dues.

3. It is further submitted by the petitioner that based on S. 60 of the CPC the gratuity amount is not attachable. S. 60 is made applicable as per the provision contained in S. 80 of the Kerala Revenue Recovery Act. Therefore gratuity cannot be withheld based on such attachment order.

4. What S. 80 of the Kerala Revenue Recovery Act provides is as follows:

"The salaries or allowances and debts due to a defaulter may be attached and realised for the recovery from him of any arrear of public revenue due on land, in the manner and to the extent provided for attachment and realisation of debts and salaries in the Code of Civil Procedure. 1908."

Thus this provision makes applicable the provision in S. 60 of the Code of Civil Procedure, 1908 for the purpose of attachment of salaries, allowances and debt due to a defaulter. What is now under attachment is not the salary but the gratuity payable to the petitioner. Of course, as per clause (g) of the proviso to S. 60 CPC "stipends and gratuities allowed to pensioners of the Government" shall not be liable for attachment or sale. This part of S. 60 of CPC is not made applicable in terms of S. 80 of the Revenue Recovery Act, for attachment under the said Act Only that part of S. 60 which covers attachment of "salaries or allowances and debts due to a defaulter" alone is made applicable as per S. 80 of the Revenue Recovery Act. The restriction in the matter of attachment of salary or allowance or debt as provided in S. 60 of the CPC alone will thus apply to attachment under the Revenue Recovery Act. Consequently the gratuity is not exempt from attachment under the Revenue Recovery Act.

In such circumstances no direction for payment can be issued when such an attachment order is in force for payment of the amount due from the petitioner.

5. O.P. fails and is dismissed.

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