**(2009) 08 AP CK 0023**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 803 of 2001

K. Suguna Lakshmi APPELLANT

Vs

UCO Bank and Another RESPONDENT

**Date of Decision :** 21-08-2009

**Acts Referred:**
Civil Procedure Code, 1908 (CPC) — Section 60, 60(1)

**Citation :** (2009) 6 ALD 83 : (2009) 6 ALT 630 : (2010) 125 FLR 679 : (2010) 1 LLJ 718

**Hon'ble Judges :** Nooty Ramamohana Rao, J

**Bench :** Single Bench

**Advocate :** A. Anasuya, for the Appellant; V. Ajay Kumar, for the Respondent

**Final Decision :** Allowed

## Judgement

Nooty Ramamohana Rao, J.—This writ petition has been instituted by the wife of a deceased employee of the UCO Bank, a Government of India undertaking. The husband of the writ petitioner, while working as an officer with the respondent UCO Bank, has been subjected to disciplinary proceedings and pursuant to an order passed on 23-12-1988 inflicting punishment of dismissal from service, his relationship with the UCO Bank has been brought to an end. Ultimately, the husband of the writ petitioner died on 18-09-1998. Since, the husband of the writ petitioner has contributed during the years of his service to the Provident Fund account bearing No. 5311, the amount outstanding therein is liable to be returned. It is the case of the writ petitioner that she has represented on several occasions for release of the said amount, but the bank officials have not released it on one pretext or the other. It is also asserted by her that the Regional Provident Commissioner at Bhubaneswar, who has been moved in the matter, also could not secure release of the Provident Fund amount to her. Hence, she instituted the present writ petition.

2. In the counter affidavit filed on behalf of the respondents it was not denied that the relationship of master and servant between the husband of the writ

 

petitioner and the respondent bank has come to an end on 23-12-1988 and that the Provident Fund dues have not been settled either in favour of the writ petitioner''s husband during his life time or to the writ petitioner after his death. But, however, it was asserted in the counter affidavit at Paragraph No. 5 that after the writ petitioner herein has rectified all the defects, which have been noticed and pointed out by the respondent bank in her claim application, the amount of Provident Fund was drawn by way of a demand draft on 19-08-2002 in a sum of Rs. 57,028-09 ps. and paid to the writ petitioner, after recovering certain amounts from it. It will be appropriate to notice the averment made in Paragraph No. 5 of the counter affidavit, which is to the following effect:

The petitioner''s husband late Markendeyulu fraudulently withdrawn certain amount from the bank while he was in service and he has also not repaid the sundry loan amount taken from the bank at that time. The bank has recovered the said amount along with interest from the amount payable to the petitioner....

It is now, therefore, pointed out that certain amount of money has been recovered by the bank from out of the amount outstanding to the credit of the Provident Fund account of the deceased husband of the writ petitioner.

3. As was already noticed supra, the relationship of master and servant between the husband of the writ petitioner and the bank was brought to an end on 23-12-1988, when the bank has imposed on him the punishment of dismissal from service. It was, therefore, incumbent upon the bank to have released the amount, which is lying outstanding to the credit of the Provident Fund account of the husband of the writ petitioner. It has not been released for most inexplicable reasons. When the writ petitioner has taken up the issue, the payment is delayed on the pretext that the claim form is submitted with too many defects and only after the defects are cured, the amount has been released on 19-08-2002 during the pendency of this writ petition. Even while releasing the money, the respondent bank has acted unilaterally in the entire matter in effecting certain recoveries from the amount lying to the credit of the Provident Fund account of the writ petitioner''s husband.

4. At my request Sri V. Ajay Kumar, learned Standing Counsel for the bank, has obtained information as to the amount that was lying to the credit of the Provident Fund account of the deceased husband of the writ petitioner at the time of termination of his services with the bank. He informed that a sum of Rs. 1,98,228-09 ps., was lying to the credit of the said account. He has also pointed out that after deducting a sum of Rs. 1,40,468/-, the balance amount, as noted supra, was paid to the writ petitioner during the pendency of the writ petition.

5. The respondent bank has not placed any order of adjudication from any competent Court with regard to the recoveries liable to be made by them from the husband of the writ petitioner. The writ petitioner was not even put on any notice and no opportunity was provided to her as to why the recoveries can be effected from the amount lying to the credit of the Provident Fund account of her

 

husband. Nearly after 14 years after the relationship of master and servant has been brought to an end, the bank has unilaterally acted in the matter and effected recovery of a huge sum of Rs. 1,40,468/- on the ground that certain amount was fraudulently withdrawn by the husband of the writ petitioner while he was in service from the bank and that a sum of Rs. 1,200/-, which has been availed by him as an adjustable loan has not been so adjusted. In the absence of any adjudicatory order from any competent Court or Forum authorizing the bank to effect recovery of such a huge sum of Rs. 1,40,468/-, the bank could not have recovered the said sum at all, on its own. The writ petitioner was entitled to be put on notice and also for an opportunity of hearing before any such order of recovery is made. Had she been put on notice and an opportunity of hearing was provided, she could have possibly raised an objection that after lapse of 12 years period of time no amount is liable to be recovered on any count from the estate of the deceased husband of the writ petitioner. For sheer denial of any such opportunity, the unilateral action of the bank in effecting recovery of Rs. 1,40,468/- from the outstanding amount of the Provident Fund account of the deceased husband of the writ petitioner, can only be declared as an unjust and illegal act. The bank has calculated interest and recovered the same. Therefore, it is elementary that there should have been an adjudicatory process involved in this regard.

6. This apart, Section 60 of the CPC (henceforth referred to as ''the Code''), provides list of the properties, which are liable to be attached and can be brought to sale in execution of decrees passed by the Civil Courts. It has been specifically provided in Clause (k) of Sub-section (1) of Section 60 of the Code, that any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority, which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, cannot be attached. Clause (ka), which was introduced with effect from 01-02-1977, makes it clear that all deposits and other sums in or derived from any fund to which the Provident Funds Act, 1968, for the time being applies, insofar as they are declared by the said Act as not to be liable to attachment, are not liable to any order of attachment or sale in execution of a decree by the competent Civil Court. In effect, even if a decree has been obtained by the respondent bank from an appropriate Civil Court and in execution of such a decree the amount lying to the credit of the Provident Fund account of the husband of the writ petitioner, could not have been attached and appropriated in discharge of such decree. What could not have been achieved through the process of a Civil Court, the respondent bank sought to achieve the same by an indirect method by way of its unilateral action of deducting the said amount. This action of the bank is totally unjust.

7. The amounts deposited in the Provident Fund account are liable to be paid as gratuities and pensions, which are essentially sanctioned for the purpose of ensuring old persons, who advanced in age, not to suffer, for want of money, for their sustenance. These amounts are intended to provide adequate succor to the

 

individual. That is the reason why these amounts are insulated against the attachment even to any order of attachment or sale in execution of a decree by the competent Civil Court. When once the philosophy of the State is very clear that these amounts should not be deprived of to the beneficiaries, the respondent bank, being the State instrumentality, is all the more bound to honour and implement such directives.

8. For the improper act of the respondent bank in withholding a sum of Rs. 1,40,468/- from the amount lying to the credit of the Provident Fund account of the husband of the writ petitioner, this writ petition deserves to be allowed.

9. Accordingly, the writ petition is allowed and the respondents are directed to release the amount of Rs. 1,40,468/-, withheld by them, to the writ petitioner, as expeditiously as possible, at any rate, on or before 31-12-2009. Since the act of the respondent bank was found to be totally unjust, it is only appropriate that the amount of Rs. 1,40,468/- must carry interest @ 6% per annum with effect from 23-01-2001, the date on which the present writ petition has been instituted in this Court. In normal circumstances, costs would have been awarded to be paid by the respondent bank, but however, taking a lenient view, no costs are awarded.

 