
(1976) 01 PAT CK 0026
In the Patna High Court
Case No : A.F.A.O. No's. 157 and 158 of 1967

Kartar Singh

APPELLANT

Vs

Mst. Durpati and Others

RESPONDENT

Date of Decision : 28-01-1976

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28(2)

Citation : AIR 1976 Patna 338 : (1976) 9 PLJR 581

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : G. Sanyal and Md. Shahjahan Ali, for the Appellant; K.D. Chatterji, Bishwanath Prasad and Chunni Lal, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Singh, J.—These two appeals have been heard together as there are common questions of facts and law involved in both the appeals. Therefore, this common judgments will govern both the appeals.

2. It may be noticed that in both the appeals, the appellant as well as the respondents are common. The judgment of the appellate Court, dated the 29th of March, 1967, arises out of Miscellaneous Appeal No. 33 of 1965 filed by Mossomat Durpati, respondent No. 1. She was aggrieved by the trial Court judgment wherein it was held that she was entitled to release of only 3/4ths amount of gratuity which was declared by respondent No. 5, Tata Iron & Steel Company, under letter dated the 11th of June, 1963 (Ext. A), and, according to the order of the trial Court, the balance of 1/4th amount of the gratuity of her husband Sonu Goala (deceased) should go towards the payment of the creditors of her husband. One of such creditors is the appellant Kartar Singh. The appellate court, on appeal by her, allowed her appeal and held that the order of the learned Subordinate Judge so far as it related to the attachment of 1/4th amount of the gratuity was contrary to law. The result was that the entire amount of gratuity money remained released in favour of respondent No. 1.

Therefore, aggrieved by the said order of the appellate Court, Kartar Singh filed Miscellaneous Appeal No. 157 of 1967 in this Court. The other appeal filed by Kartar Singh is Miscellaneous Appeal No. 158 of 1967 which is against the judgment of the appellate Court of the same date, namely, the 29th of March, 1967. This judgment of the appellate Court was in Miscellaneous Appeal No. 28 of 1965 in which Kartar Singh was the appellant, who was aggrieved by the judgment of the trial Court to the extent wherein it was held that only 1/4th of the gratuity money payable to Sonu Goala, the husband of Mt. Durpati, was available to the creditors. According to Kartar Singh, the trial Court ought to have held that the entire amount of gratuity was available to the creditors. The appellate Court, on appeal, observed "I have held that the gratuity never vested in the Court, and was not, in fact, attached by the Court. The learned Sub-Judge may have been under the impression that it had been attached, but there is no specific order of vesting or attachment and there could, therefore, be no occasion for its release. In that view of the matter, the appeal filed by Kartar Singh was dismissed. Therefore, Kartar Singh has filed in this Court Miscellaneous Appeal No. 158 of 1967 against the said order of the appellate Court, dated the 29th of March, 1967.

3. Learned counsel for the appellant in both the appeals, in order to appreciate the points involved in these appeals, has referred to certain relevant facts and dates. Sonu Goala, the husband of Mossomat Durpati, was under the employment of respondent No. 5 at TISCO in Jamshedpur. He had taken loan from certain creditors, including the appellant. At the instance of the creditors, Sonu Goala was declared insolvent on the 31st of March, 1959, u/s 27 of the Provincial Insolvency Act, 1920 (hereinafter referred to as "the Act"). Relevant provision of Section 27 of the Act reads thus:--

"(1) If the Court does not dismiss the petition, it shall make an order of adjudication, and shall specify in such order the period within which the debtor shall apply for his discharge."

According to the said provision, the period of three years was fixed for his debtor to apply for his discharge. Subsequently, the said period was extended further to one year. Even then, Sonu Goala did not apply for his discharge. In that view of the matter, the Insolvency Court acted u/s 43 of the Act. The relevant provisions of which read thus:--

"43. If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, (the Court may annul the order of adjudication or make such other order as it may think fit, and if the adjudication is so annulled, the provisions of Section 37 shall apply.)"

It may be noticed that Section 43 also refers to Section 37 of the Act which reads thus:--

"37 (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver, shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interests therein on such conditions (if any) as the Court may, by order in writing, declare.

(2) Notice of every order annulling an adjudication shall be published in the Official Gazette and in such other manner as may be prescribed."

Learned counsel for the appellant has assailed the judgments and orders of the appellate Court in both the appeals. According to him, the lower appellate Court ought not to have released any part of the gratuity money to the widow of the deceased Sonu Goala who died after he was superannuated from his service. The date of his superannuation, the learned counsel pointed out, was the 6th of February, 1963, whereas the date of Ext. A whereby the gratuity of Sonu Goala was declared by respondent No. 5 was the 11th of June, 1963. Therefore, according to him, the right to receive the gratuity had already accrued to Sonu Goala when he was superannuated and it was the property of Sonu Goala.

4. In my opinion, this submission of the learned counsel for the appellant is not tenable. Reference may be made to the provisions contained u/s 28 of the Act which is with regard to effect of an order of adjudication. The relevant provisions of Section 28 of the Act are to be found under Clauses (1) and (2) of the section itself which read thus:--

"(1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors.

(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, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose."

In the case of *Tata Iron and Steel Co. Ltd. Vs. Sultan Khan Kabuli and Others*, , Mahapatra, J., had an occasion to consider as to whether gratuity could be treated as an insolvent's property as contemplated u/s 28, Clause (2) of the Act. His Lordship observed :

"A gratuity, until it is paid out to the employee, cannot be treated as a property of the employee, insolvent within the meaning of Section 28(2) of the Act and hence it cannot be attached by the Insolvency Court. The payment of gratuity

cannot be said to be on the same basis as that of salary or wages for which contracts are entered into between employer and employee."

It may also be noticed that aggrieved by the said observation of his Lordship L. P. A. Nos. 30 and 31 of 1967 were preferred which were dismissed by the judgment D/- 26-11-1973 (Pat), upholding the above observation of Mahapatra, J. Reference may also be made to the case of Tata Iron and Steel Co. Ltd. Vs. Sudhir Chandra Sarkar, wherein Untwalia and Wasiuddin, JJ., had an occasion of considering the question with regard to the right of the employee under gratuity as contemplated under the provisions of Rules 6, 7 and 10 of the Retiring Gratuity Rules of Tata Iron & Steel Co. Their Lordships by reference to those rules observed that until and unless the company had decided to pay the gratuity money, in accordance with Rule 7 or otherwise, the mere fact of the employee becoming eligible to get it under Rule 6 did not create any right for the payment of gratuity under the rules by enforcement of such a claim in a Civil Court. The matter of payment of gratuity was at the absolute discretion of the Company and the employee, howsoever unfortunate the position might be under the modern stage of the society, was not entitled to claim it as a matter of right. Even though payment of gratuity under the rules was an implied condition of service, yet the condition was further conditioned by the provisions made in the rules and was subject to them."

In that view of the matter, in my view, there is no merit in these appeals.

5. In the result, both the appeals are dismissed and the judgment and order of the lower appellate Court are upheld; but, in the circumstances of this case, I shall make no order ,as to costs.