

(1941) 07 BOM CK 0013

In the Bombay High Court

Case No : Second Appeal No"s. 14 and 83 of 1940

K.U. Kulkarni

APPELLANT

Vs

Ganpat Hiraji Tell

RESPONDENT

Date of Decision : 09-07-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(h)

Citation : (1942) 44 BOMLR 264

Hon'ble Judges : Wassoodew, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Wassoodew, J.—These are two second appeals from a decision of the District Judge of Jalgaon reversing the order of the Joint First Class Subordinate Judge of that District directing that the earnings of the insolvent-respondent No, 1 vested in the receiver in insolvency inasmuch as they were not "wages of a labourer " within the protective provisions of Clause (h) of Section 60 of the Civil Procedure Code, 1908. The learned District Judge held that the earnings were protected as the respondent was a labourer. The receiver and one of the creditors of the insolvent have filed separate appeals against that decision.

2. A preliminary objection has been taken on behalf of the insolvent that no second appeal lies against the District Judge's order. That objection is untenable because the question whether the earnings of an insolvent would or would not vest in the receiver u/s 28, Clause (5), of the Provincial Insolvency Act, has to be decided by the Insolvency Court under the provisions of Section 4 of that Act which expressly provides for a second appeal.

3. The principal question arising in these appeals is whether the respondent is a labourer within the meaning of Clause (h) of Section 60 of the Civil Procedure Code, for the answer to that question would be determinative of the nature of the earnings of the respondent. The learned District Judge has upon the

respondent's uncontradicted statement thus described the nature of his duties. He says that the respondent has no fixed pay but gets a commission upon the quantity of work done through him or under his supervision, that he is a head jobber, that he usually gets the work of spinning done by the mill-hands working under him, that in case of necessity he has to do personally the work which the mill-hands do, and that the total period of his daily work is nine hours. That description finds support from the other witnesses examined in the case who too were not contradicted on that point. The learned Judge came to the conclusion on the question of fact that the respondent did some manual work every day although not continuously. According to his finding the terms of the respondent's employment were that he was to work as a mill-hand when required and supervise the work of mill-hands. That is a combination of duties for which the respondent received his monthly remuneration. The question is whether that remuneration could be described as the "wages of a labourer" and is therefore exempted from attachment under the provisions; of Section 60(h) of the Civil Procedure Code.

4. The word "labourer" has been variously understood and it is extremely difficult to say what class) of workers, manual or otherwise, would come within that definition. The learned Judge of the Insolvency Court has described the respondent as a "head jobber", and thought that as such he is not a labourer for a labourer is a person who "earned his daily bread by personal manual labour or in occupations which required little or no art or skill or previous education". That was how the term "labourer" was defined by Mr. Justice Melvill in *Jechand Khusal v. Aba and Baika* (1880) ILR 5 Bom. 132. There the Court was dealing with the status of persons who agreed to spin cotton belonging, to a Spinning and Weaving Co., and to receive a certain amount of money for certain quantity of cotton spun by them. The learned District Judge in appeal adopted the ordinary dictionary meaning of the term labourer such as "a man doing for wages work that requires strength or patience rather than skill or training". A labourer is ordinarily understood to be a person engaged in digging or doing other useful or productive work with his hands? (see Wharton's Law Lexicon). A "labourer" has been differently described in different Statutes or Acts of Parliament according to their application to different branches of industry. For instance, a labourer in a statute dealing with agricultural work has been described as an agriculturist or servant engaged in husbandry; and in that dealing with textile work as a mill-hand or manufacturer. A gang of workmen employed in a textile mill industry would, I think, be described as labourers and the head of that gang would also be a labourer if he participates in the work of his gang occasionally and not necessarily continuously. Wharton in his Law Lexicon (14th ed., p. 561) under the definition of "labourer" refers to *Morgan v. London General Omnibus Co.* (1884) 53 L.J.Q.B. 352 and observes that a farmer is not a labourer within the Sunday Observance Act, 1677, but, nevertheless, a driver of a motor omnibus is, being "engaged in manual labour"? [*Smith v. Associated Omnibus Company* [1907] 1 K.B. 916. The doing of manual work

would not necessarily be a good test, for " professional footballers are not", according to National Health Insurance Act, 1924, In re : Professional Players of Association Football, In re [1934] 2 K.B. 265, employed by way of manual labour". That illustrates the difficulty of defining the term " labourer". In my opinion a person would be regarded as a labourer within the meaning of Section 60(h) of the Code if he does or is expected to do that class of work which requires manual labour as the work of spinning does. The manner of fixing the remuneration could not be regarded as a safe test for determining whether the earnings are wages, for, in *Jechand Khusal v. Abd and Baika*, Melvill J. observed that " remuneration of mill-hands is not any the less " wages", because the amount is made to depend upon the number of pounds of cotton spun". The lower Court has found that the doing of personal manual labour by the insolvent is a term, of his employment and that finding must be accepted. Consequently the respondent was rightly held to be a labourer and the remuneration earned by him "wages of a labourer" within Section 60(H) of the Civil Procedure Code. But it is next argued that the entire wages of labourers or domestic servants are not exempt from attachment, for, the first clause is controlled and qualified by the second clause of Section 60 (h) of the Civil Procedure Code. That clause runs as follows :?

The wages of labourers and domestic servants, whether payable in money or in kind; and salary, to the extent of the first hundred rupees and one-half of the remainder of such salary.

5. What is urged is that the term " salary" includes the " wages of labourers",. and that consequently the latter are subject to exemption to the extent stated in the latter part of Clause (h) of Section 60. That argument assumes that the legislature used the two analogous words " wages" and " salary" in the same sense. According to Maxwell " where analogous words are used each may be presumed to be susceptible of a separate and distinct meaning, for the legislature is not supposed to use words without a meaning." (Interpretation "of Statutes, 8th Ed., p. 276). The legislature, in my opinion, must always be; presumed to aim at precision and in so doing would naturally follow the safe rule of always calling the same thing by the same name. If it has used two different expressions, though analogous in nature, in different parts of the same clause, it must be assumed that they were intended to be used in a different sense. The legislature was obviously enacting for a special class of wage earners as opposed to the general class of people earning a living when it stated that wages of labourers or domestic servants which are payable in money or kind are exempt from attachment. The Court is, therefore, bound to follow the general rule that special expressions take from things general. Where there are general words in the later clause capable of reasonable" application without being extended to the subject specially dealt with by the earlier clause and in the absence of any indication of any particular intention to that effect, the presumption would be in my opinion that the legislature did not intend by the use of the general expression to repeal or reduce the effect of the earlier and special clause or

qualify it in any sense by taking away a particular privilege of a particular class of persons. Having regard to the proper operation of the expression used the general clause must be construed in a distinct sense. If, as was argued, the term "salary" must include the wages of a labourer, then evidently, if it was a controlling clause, the first clause was redundant. The rule of construction avoids absurdity or redundancy in a legislative enactment. I was referred to the following expression of opinion of Biswas J. in the case of Jnanendra Kumar Roy Vs. Akash Chandra Chowdhuri and Another, where the question raised was whether a head clerk in a tea shop earned salary or wages and whether the term " salary" bore a restrictive interpretation.

I do not however desire to express any final opinion on the point. All that I need say is that from the collocation of the words used in this clause it is fairly arguable that the word " salary" is intended to mean salary of labourers and domestic servants only.

6. With extreme respect to the learned Judge, I find it difficult to agree why it is impossible to construe differently the meaning of the analogous words used?(see also In re Hormusji Jamshedji [1939] AIR Sind 134 In my view the second clause is designed to protect to a limited extent salaries of servants who are outside the class of labourers or domestic servants. If the legislature intended that the later clause should control the preceding clause, in all reason it would have omitted the latter altogether without causing any embarrassment or difficulty. In that view of the matter I think the remuneration of the respondent was not liable to attachment at all. Therefore these appeals fail and are dismissed with costs of respondent No. 1 only.