

(1984) 01 KL CK 0002
In the High Court Of Kerala
Case No : C.R.P. No. 168 of 1982

M/S. Bharatha Bankers

APPELLANT

Vs

E. Rajendran

RESPONDENT

Date of Decision : 04-01-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60, 60(1)

Citation : (1984) KLJ 142

Hon'ble Judges : S.K. Kader, J

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant; K.P. Dandapani, for the Respondent

Final Decision : Allowed

Judgement

S.K. Kader, J.—The only question that arises for determination in this revision filed by M/s Bharat Bankers, decree-holder in O.S. No. 105/78 on the file of the Subordinate Judge, Kozhikode, is whether the Dearness Allowance, Special Allowance and House Rent Allowance granted to the judgment debtor, the respondent herein, who claims to be an employee of the Central Bank of India; Calicut is liable to be attached or not. The revision petitioner obtained a money decree against the respondent herein. While steps were taken in execution for attachment of the salary of the respondent, he resisted the execution on the ground that he is entitled to the benefit of clause (1) of section 60 of the Code of Civil Procedure. The decree holder sought to attach the salary of the judgment debtor at the rate of Rs. 466/- per mensem. The judgment debtor contended that he is an employee of a nationalised bank, that his basic pay is only Rs. 580/-, special allowance is Rs. 171/-, D.A. Rs. 494.86 and H.R.A. is Rs. 75/- and his total emolument is Rs. 1320.86 and that in view of the fact that he is an employee in a nationalised bank, he is entitled to the benefit of section 60(1) of the Code of Civil Procedure. The learned Subordinate Judge, relying on a decision of this Court reported in Kousalya Devi v. Praveen Bonkers (1979 KLT 932), held that the judgment debtor, being an employee of a nationalised bank is entitled to

get the D.A., Special Allowance and H.R.A. excluded by virtue of the provisions in section 60(1) of the Code, that his basic pay of Rs. 580/- alone can be treated as salary for the purpose of attachment and the amount available for attachment is only Rs. 60/-. Accordingly an order was issued by the learned Subordinate Judge attaching only Rs. 60/- per mensem from the salary of the judgment debtor.

2. Attacking this order, Mr. M.C. Sen, learned advocate appearing for the petitioner submitted that the decision relied on by the court below has absolutely no application to the present case and that the judgment debtor is not entitled to the benefit of section 60(1) of the Code of Civil Procedure, that a nationalised bank is not a Government establishment, that an employee in a nationalised bank cannot be considered as a servant of the Government and that in any view, in the absence of any notification as contemplated in section 60(1) of the Code, the judgment debtor is not entitled to claim any benefit thereunder.

3. The learned Subordinate Judge has proceeded on the assumption that this Court has decided in the case reported in Kousalia Devi v. Praveen Bankers (1979 KLT 932) that an employee in a nationalised bank is a Government servant and that the Dearness Allowance, Special Allowance and House Rent Allowance granted to an employee of a nationalised bank have to be excluded in deciding the attachable portion of the salary. This is wrong. This Court has not rendered any such decision in the above case. What was decided in that case was that clause (1) of section 60 of the Code is a special provision relating to a servant of a Government or a servant of a Railway Company or local authority and that with respect to them only if the Government has, by a notification in the Official Gazette, declared any allowance as exempt from attachment such allowance can be excluded. As is clear from the provision in section 60 of the Code, Salary takes in all emoluments excluding any allowance declared exempt from attachment under the provisions of clause (1) of section 60. It is not disputed that the respondent judgment-debtor is an employee in a nationalised bank. But it is disputed that he is a servant of the Government and is entitled to the benefit of section 60. Argument of the counsel for the petitioner in this regard is two-fold. Firstly it was contended that a nationalised bank cannot be treated or characterised as a Government establishment and an employee in a nationalised bank is not a servant of the Government of India. Secondly, it was argued that even assuming, without admitting that an employee of a nationalised bank is a servant of the Government, unless any allowance forming any part of his emoluments is by a notification in the Official Gazette, declared exempt from attachment, he is not entitled to the benefit of clause (1) of section 60 of the Code. On the admitted facts of the case, both the arguments have to be upheld. Although counsel for the respondent took time for producing notification. Subsequently the counsel submitted that he was not able to trace out or get any notification as contemplated in clause (1) of section 60 of the Code declaring any allowance forming part of the, emoluments of the judgment-debtor or for that matter, any of the employees in the Central Bank of India, exempt from attachment. On that short ground itself, this revision petitioner is entitled to

succeed. Counsel for the petitioner cited a Full Bench decision of this Court reported in *Canara Bank v. Appellate Authority* (1981 KLT 413) in support of his contention that a nationalised bank has a juristic personality distinct from the State and the fact that the entire share capital of the bank belongs to the Government does not make the new bank a Government and an employee of such a bank, a servant of the Government. A Full Bench of this Court in *Canara Bank v. Appellate Authority* (1981 KLT 413) observed that a bank has its own separate existence distinct from the shareholders and therefore the mere fact that the entire share capital of the bank belongs to the Government does not make the new bank a Government, that it has a juristic personality distinct from the State although it is linked with it and that it will be difficult to call it an establishment under the Government. Therefore it is clear from the above discussion and on the admitted facts of the case that the respondent is not entitled to the benefit of section 60(1) of the Code of Civil Procedure.

In the result, this revision petition is allowed, and the order under attack is set aside. The court below will take necessary further steps in accordance with law and in the light of this judgment.