(1965) 06 BOM CK 0009

In the Bombay High Court

Case No : Appeal No. 54 of 1964 and Insol. No. 47 of 1964

Pearly Andrew Franz APPELLANT

Vs

Official Assignee and Another RESPONDENT

Date of Decision : 25-06-1965

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10(1)
Presidency Towns Insolvency Act, 1909 — Section 10(1), 17

Citation : AIR 1966 Bom 121 : (1965) 67 BOMLR 654 : (1966) ILR (Bom) 325 : (1965) MhLj 807

Hon'ble Judges : Chaninai, C.J;Modi, J

Bench : Division Bench

Advocate : B.N. Shah, for the Appellant; A.G. Shah, for the Respondent

Judgement

Chainani, C.J.

(1) The appellant was formerly employed in M/s Killick Nixon and Co. Ltd. Bombay. They had established a provident fund for the benefit of their employees. The appellant used to contribute to the that fund. In 1962 the Employee''s provident fund Act, 1952 herein after referred to as the act was made applicable to the establishments of M/s Killick Nixon and Co. Ltd. The appellant than become a member of the fund established under the Scheme framed under the act. Under sub -section (2) of S. 15, the accumulations in the provident of fund of this employers become liable to the transferred t the fund established under the provisions of the act. The appellant retired from service in the beginning of 1964. On 16th June 1964 he was adjudicated insolvent.

(2) The Official Assignee then addressed letter to the Regional provident fund commissioner and also to the Appellant''s ex-employers asking them not to pay to the appellant the amounts lying to his credit in hi provident fund account. The appellant then took out a Notice - of Motion in which prayer (c) was as follows:

"(C) That the Official Assignee may be directed to withdraw his letter to the ex -

employees of the Insolvent and the provident fund commissioners requesting them to detain the insolvent provident fund ,and the he may be further directed not to write any further letters in order to deprive the insolvent of his provident funds."

This Motion was dismissed by Mr. Justice the present appeal has been filed.

(3) Sub - section (1) of S. 10 of the Employee''s Provident funds Act is in the following terms:

"The amount standing to the credit of any members in the fund or of any exempt employee in provident offend shall not in any way be capable to being assigned or charged and shall not be liable to attachment of under and decree o order of any court in respect of any debt of liability incurred by the member or the exempted employee and neither the official assignee appointed under the presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act 1920, shall e be entitled to or have any claim on any such amounts"

The letter part of this sub - section provides that the official assignee appointed under the presidency Towns Insolvency act, 1909 shall not be entitled or have any claim on the amount standing to the credit of any member in the fund. The reference to the Presidency Towns Insolvency Action the this sub - section makes its clears that when the legislature enacted this provision it was aware of the provisions of the presidency Town Insolvency act under S. 17 of which on the making of the an order of the adjudication of the property of he insolvent wherever situate vests in the official assignee. Notwithstanding that provision the legislature has specifically provided that the official assignee shall have no the title to the or any claim of the amount standing to the credit to the insolvent in the provident fund. The intention of the legislature of therefore clear and the that is the this sub - section should overuse the provisions of the presidency Towns Insolvency act. It follow that the so long as amount stand to the credit of the insolvent the fund that is so long s it is lying with the Regional Provident Fund commissioners and has not been paid to the insolvent, the amount does not vest in the official assignee and he cannot lay any claim to it. The immunity given b y the sub - section (1) of S. 10 will, however, not continue after the amount of has been paid to the insolvent, Joseph Benjamin Bonjour (Insolvent) Vs. The Official Assignee of Madras, .

(4) The learned judge has referred to sub section (2) of S. 69 which provides for certain percentages of the employee''s contribution of the interest thereon being forfeited to the fund, when a member with draw any amount of under sub-section (2) of the this section. The learned judge was include to hold that the sub - section (1) of S. 10 applies only to those amounts, which are liable to the deducted and forfeited under the provisions to the act and which not begin payable to the insolvent of the cannot best in the official assignee. With respect, it seem to the us that the view taken by the learned judge o this point is not

correct. The amounts which have to deducted from the sum standing to the credit of the member in the fund or which are liable to the forfeited and under the provisions of the act are not payable to the member. As he is not entitled to them they cannot be attached under any decree or order any of court in respect of any debt s or liability incurred by him. No special provision is the regard to the such amounts was therefore necessary. The object underlying sub-section (1) of the S. 10 appears to the much wider. One of the purposes of "Provident Fund is to make some provision for the families and of the employees". The legislature therefore appears to have provided by S. 10 that the amount standing to the credit of subscriber in the provident fund shall not be available to this creditors.

(5) We therefore allow the appeal, set aside the order made by the learned judged dismissing the notice of motion taken out but the appellant in so far as prayer (c) in the notice of motion of the concerned and make an order in term of prayer (c) in the notice of the motion dated 2nd July 1964.

(6) The appellant should get his costs of the appeal from the second respondent.

(7) Appeal allowed.