
(1991) 06 KL CK 0039
In the High Court Of Kerala
Case No : C.R.P. No. 534 of 1991-B

P.O. Madhavan Nambiar

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 20-06-1991

Acts Referred:

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

Citation : AIR 1991 Ker 367

Hon'ble Judges : P. Krishnamoorthy, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; P.V. Narayanan Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

P. Krishnamoorthy, J.—In this revision by the 2nd judgment-debtor, the main question that arises for consideration is as to whether the Provident Fund amount received by him on his retirement and deposited in a bank is liable to be attached in execution of a decree or not. Whether the debt is covered by the Agricultural and Rural Debt Relief Scheme, 1990 promulgated by the Government of India is the other question to be decided. Both these questions were found against the revision petitioner by the execution court.

2. The revision petitioner 2nd judgment-debtor was a surety in respect of a debt and the plaintiff, a nationalised bank, obtained a decree against the principal debtor and the revision petitioner. He was employed as a clerk in the Education Department of the Kerala State and he retired on 31-1-1982. On 3-2-1988 he obtained the Provident Fund amount to his credit and deposited major portion of the amount in the Canara Bank, Payyannur in fixed deposit and a small amount in the S.B. account. In execution of the decree the decree-holder-bank tried to attach the amount from out of this deposit in the Canara Bank towards the decree-debt. The revision petitioner raised the contention that the same being Provident Fund amount is exempted from abatement u/s 60(1)(k) of the Code of

Civil Procedure. Section 60(1)(k) is to the following effect :--

"(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;"

The contention of the decree-holder-bank is that when once the Provident Fund amount is received by the Government servant, it ceases to have the character of Provident Fund amount and it is only an amount belonging to the judgment-debtor which can be attached in execution of a decree and that Section 60(1)(k) is not applicable.

3. After hearing counsel for both sides, I am inclined to agree with the lower court that the amount is liable to be attached. It is no doubt true that Section 60(1)(k) exempts Provident Fund amount from being attached in execution of a decree, but that exemption will be available only till it continues to be Provident Fund amount in the hands of the trustees and not after it is received by the employee who is entitled to the same. The identical question was considered by their Lordships of the Supreme Court in *Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others*, and considering Section 60, C.P.C. and Sections 3 and 4 of the Provident Funds Act, in Paragraph 11 their Lordships observed as follows --

"We may state without fear of contradiction that provident fund amounts, pensions other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possibly be entertained on this question, the decision in *Union of India (UOI) Vs. Radha Kissen Agarwalla and Another*, erases them. Indeed, our case is a fortiori one, on the facts. A bare reading of *Radha Kissen* makes the proposition fool-proof that so long as the amounts are Provident Fund dues, then till they are actually paid to the government servant who is entitled to it on retirement or otherwise, the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and overrule the contention."

From the aforesaid passage it is clear that when once the amount is received by the employee on his retirement, attachment is possible and lawful and the exemption provided in Section 60(1)(k) will not be available. To the same effect is the decision of the Supreme Court in *Union of India (UOI) Vs. Radha Kissen Agarwalla and Another*, and the Full Bench decision of the Madras High Court in *Joseph Benjamin Bonjour (Insolvent) Vs. The Official Assignee of Madras*. In that view of the matter, the execution court was right in ordering attachment of the money lying in deposit in the name of the 2nd judgment-debtor towards the decree-debt.

4. Coming to the applicability of the Agricultural and Rural Debt Relief Scheme, 1990 the execution court was right in denying the claim. In order to make the Scheme applicable, the person must be a borrower under the Scheme. "Borrower" is defined in Section 2(d) meaning thereby any individual farmer or other persons mentioned in that Section who had taken loans from a bank for any activity of agricultural or for an artisan activity and who is a non-wilful defaulter. On seeing the previous records it is clear that the amount was borrowed by the 1st defendant not for an agricultural purpose but for some personal purposes. In that view of the matter, he cannot be a borrower under the Scheme. "Eligible loan" is defined in Section 2(g) of the Scheme which means only loans advanced after 1st of April, 1986. Here it is an admitted fact that the loan was obtained in 1973. Thus the Scheme relied on by the revision petitioner also has no application to the facts of this case.

5. Both the contentions raised by counsel for the revision petitioner are without any merit and accordingly the C.R.P. is dismissed, but without any order as to costs.