

(1935) 08 CAL CK 0015
In the Calcutta High Court

Purusottam Sinha

APPELLANT

Vs

Satyendra Chandra Ghose Moulik and Others

RESPONDENT

Date of Decision : 06-08-1935

Acts Referred:

Pensions Act, 1871 — Section 11
Provincial Insolvency Act, 1920 — Section 28(5)

Citation : 164 Ind. Cas. 747

Hon'ble Judges : S.N. Guha, J; Lodge, J

Bench : Division Bench

Judgement

1. This is an appeal from an order passed by the learned District Judge Murshidabad, directing an insolvent, the appellant in this Court, to pay to the Receiver in insolvency a sum of Rs. 50 per month out of his pension.

2. The question arising for consideration in the case is this Whether in view of the provision contained in Section 28(5) of the Provincial Insolvency Act, the order passed by the Judge in the Court below is in accordance with law. There is no question that the appellant, draw a pension of Rs. 1-12 from the Government, for past services, and the amount, ordered to be paid to the Receiver is to come out of that pension; it was, therefore, urged in support of the appeal that the pension enjoyed by the insolvent being in law incapable of being attached, the Court below was in error in directing payment of Rs. 50 per month out of the pension and in ordering that in default of such payment the insolvent was liable to have the order of adjudication annulled.

3. The Provincial Insolvency Act by Section 28, Sub-section (5) provides for thus:

4. The property of the insolvent is available for distribution among his creditors; but such property shall not include any property which is exempted, by any enactment for the time being in force, from liability to attachment and sale in execution of a decree.

5. The enactment for the time being in force relevant for the purpose of the

above provision in the Provincial Insolvency Act, is that contained in Section 11 of the Pensions Act (XXIII of 1871) laying down definitely that no pension granted or continued on account of past services, and no money due on account of any such pension, shall be liable to seizure or attachment by process of any Court in British India at the instance of the creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

6. The above provision in the Pensions Act is unqualified, and must be Strictly construed, in favour of the pensioner. The reason given by the District Judge in his order recorded on March 1.7, 1934, is that the moment the pension is realised it is the pensioner's property and can be dealt with in the same way as any other property of the insolvent appears to be altogether contrary to the spirit, if not to the letter of the law, as contained in Section 11 of the Pensions Act.

7. In our judgment, the order passed by the Judge in the Court below, holding that there is no bar to an order directing the insolvent to pay Rs. 50 a month is unsupportable and must be set aside as erroneous in law.

8. The appeal is allowed. The orders passed by the Court below on January 27, February 21 and March 17, 1934, against which this appeal is directed are set aside.

9. There is no order as to costs in the appeal.