(1936) 09 PAT CK 0034

In the Patna High Court

Raja Kirtyanand Singh Bahadur and Others APPELLANT

Vs

Saileswar Sen RESPONDENT

Date of Decision : 08-09-1936

Acts Referred:

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

Citation : AIR 1937 Patna 22

Hon'ble Judges : Mohamad Noor, J;Madan, J

Bench : Full Bench

Judgement

Mohamad Noor, J.—This is an appeal against an order of the Subordinate Judge of Bhagalpore passed in a simple money suit refusing attachment before judgment of a decree obtained by the defendant of the suit against the plaintiffs. The facts are that one Mr. S. Sen was for some time the principal of the T.N.J. College at Bhagalpore. For some reason or other his services were dispensed with. Under the rules of the College he was to make compulsory deposits in the Provident Fund maintained by the College. After his services were dispensed with, Mr. Sen instituted a suit in the Original Side of the Calcutta High Court for realisation from the College authorities of the Provident Fund amount due to him. Thereafter the Governing Body of the College (who are the appellants before us) instituted in the Court of the Subordinate Judge at Bhagalpore a suit claiming about Rs. 15,000 from Mr. S. Sen for his malfeasance or misfeasance during his incumbency as the Principal of the College. The Calcutta High Court issued an injunction against the defendants of the suit before it, i.e. the appellants, directing them, not to proceed with the Bhagalpore suit till the disposal of the suit in Calcutta. Therefore the trial of the Bhagalpore suit was held up. It now appears that the Calcutta suit has been decreed for Rs. 5,700 on account of the principal Provident Fund and for Rs 6,000 as costs (we are informed, but there is no material before us to verify it that this Rs. 6,000 as costs is subject to the lien of the attorneys of Mr. Sen for the sum advanced by them towards the prosecution of the suit). Be that as it may, the plaintiffs of the Bhagalpore suit applied to the Subordinate Judge under Order 38, Civil P. C, for calling upon the defendants to furnish security and failing which for an order of attachment of the decree for Provident Fund which Mr. Sen had obtained against them at Calcutta. The learned Subordinate Judge refused this application and the plaintiffs have preferred this appeal.

2. The learned Subordinate Judge refused the prayer of the plaintiffs mainly on the ground that the decree really represented the Provident Fund money which is still in the hands of the employers who are the managers of the Fund and is not attachable under the provisions of the Provident Fund Act 1925, read with Section 60(k), Civil P.C. Mr. Manohar Lal who has appeared on behalf of the appellants has contended first, that the exemption from attachment is confined to Government Provident Funds and the fund in question is not such a fund. Now Section 3 of Act 19 of 1925, which with certain modifications subsequently made is the Provident Fund Act now in force, enacts that:

A compulsory deposit in any Government or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositer, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such compulsory debt.

3. Section 60, Civil P.C. enumerating the various properties not liable to attachment, mentions in Clause (k):

All compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act 1897 for the time being applies in so far as they are declared by the said Act not to be liable to attachment.

4. It may be noted that the Act of 1897 referred to in this sub-clause was repealed by Act 19 of 1925, Clause 3 of which I have already quoted above. Now, it is obvious that these two provisions, one in the Provident Fund Act and another in the Civil Procedure Code, make it clear that compulsory deposits in Government and Railway Provident Funds are not liable to attachment at any rate as long as they are in the Fund. Government Provident Fund has been defined in the Provident Fund Act as follows:

Government Provident Fund means a Provident Fund, other than- a Railway Provident Fund, constituted by the authority of the Government for any class or classes of its employees or of persons employed in educational institutions or employed by bodies existing solely for educational purposes.

5. The words "of persons ... purposes" have been substituted in the definition for the words "for teachers in educational institutions" by the Provident Fund Amending Act of 1927. It is therefore obvious that the Provident Fund maintained by the college authorities in this case is a Government Provident Fund provided it has been constituted by the authority of Government. If so, it is

immune from attachment as I have, said at least as long as the money remains in the Fund. Now, there has been much controversy before us whether or not the Provident Fund with which we are dealing was constituted under the authority of the Government. It appears that in 1925 the Local Government took up the question of the introduction of the Provident Fund in the aided Colleges of Bihar. The first notification in this respect was issued on 30th June 1925 (No. 308 E.R. published at p. 784 of the Bihar and Orissa Gazette supplement, dated 8th July 1925). In that notification it is mentioned that the Provident Fund was already constituted in the T.N.J. College, Patna, for which a sum of money was provided by the Government. The T.N.J. College is specifically mentioned there, but as there was a Provident Fund already constituted in that College the Resolution mentions that the authorities of that College were called upon to express their views whether they were willing to adopt the rules framed by the Government. Thereafter we find a second notification No. 110 E, dated 5th January 1927, published in the Bihar and Orissa Gazette (Supplement) dated 12th January 1927, which shows that the T.N.J. College expressed a desire for the amendment of certain rules which were amended and thereafter the authorities of the College adopted the rules framed by the Government.

6. Mr. Manohar Lal has contended that the adoption the rules by the College authorities does not mean that the Provident Fund was constituted under the authority of the Government. I think there is a good deal of force in the view which was adopted by the learned Subordinate Judge that though there was a Fund in the College from before the Government rules were enforced and the adoption of the rules of Government must be taken to mean that at least since that date the Fund was constituted under the authority of the Government. Therefore, I agree with the view taken by the learn ed Subordinate Judge that the Fund in question is a Fund constituted under the authority of the Government from the date of the Notification of January 1927. Mr. Manohar Lal has however contended that the defendant Mr. Sen was in service since 1922 and any compulsory deposits made by him prior to January 1927 cannot be immune from attachment. First of all, no data has been supplied to us to show how much of the amount of the decree against the authorities of the College represents the contribution of the defendant prior to January 1927 and how| much represents the amount contributed subsequently; apart from this, when the Fund was constituted under the authority of Government, the entire amount of the Fund becomes consolidated into one Fund.

7. Mr. Manohar Lal next contended that the immunity from attachment lasts only as long as the money is in the Fund, but when it reaches the depositor, i.e. the employee, the immunity comes to an end and the amount is liable to be attached just as any other property of a debtor. On this point unfortunately there is no clear decision of any High Court. Mr. Jayaswal appearing on behalf of the respondent referred us to the case in Nagindas Bhukhandas v. Ghelabhai Gulabdas AIR 1920 Bom 58 , which goes to the length of laying down that even if the money has reached the hands of the employee it cannot be taken by the

receiver in an insolvency proceeding. This decision, however seems to have been dissented from in a single Judge decision of the Madras High Court in Official Assignee of Madras Vs. Ranganayaki Ammal and Another, . There are however, observations in some decisions of the Calcutta High Court which may support both the views. For instance in Hindlay v. Joy Narain AIR 1920 Cal 305 there are observations of Rankin, C.J. which lend support to the view that the immunity lasts only as long as the money is in the hands of the institution, but at another place it is observed that it was a deliberate act of the Legislature to give protection to the Provident Fund money for the benefit of the employees so that when they retire they may have something to live upon and in the event of death they have something to leave. However, I think we are not called upon to decide this question of law as, in my opinion, it does not in fact arise. Up till now the money is still in the Fund. A decree has been passed but the money has not left the Fund. What we are asked in this case is that we should order attachment of the decree thereby depriving the defendant of his right to receive the money that is, indirectly attaching the money while it is still in the Fund Mr. Manohar Lal contended that the plaintiff will have no objection if the defendant be injuncted against transferring the decree. In my opinion such an order will be absolutely useless and infructuous because the defendant will still be entitled to execute the decree and realise the amount. The only order which can be of any benefit to the plaintiffs will be an order to attach the money as soon as it is realised. Practically that order will amount to an order attaching the Provident Fund money before it has reached its destination. Therefore, independent of the consideration whether or not the money is attachable after it reaches the hands of the depositor, I think in this case we are in effect being asked to attach it before it has reached the hands of the defendant.

8. On the whole I think that the view taken by the learned Subordinate Judge is correct. I would however, ask the learned Subordinate Judge to expedite the disposal of the suit so that if the plaintiffs get any decree they may execute the same against any property of the defendant which may be available. The defendant has given a list of other properties which he claims to possess. It will be open to the plaintiffs to make inquiries and choose some one of them and ask the learned Subordinate Judge to call upon the defendant to furnish security, failing which to make out a case for attachment of those properties before judgment With these remarks I would dismiss this appeal with costs.

Madan, J.

9. I agree.

