

(1972) 09 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Revision No. 232 of 1965 and Miscellaneous Appeal No. 77 of 1968

Sahib Zada Adbul Bais Khan

APPELLANT

Vs

Budh Singh Bapna

RESPONDENT

Date of Decision : 25-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2(3), Order 39 Rule 2(4), 60(1)

Citation : AIR 1973 Raj 201 : (1972) WLN 908

Hon'ble Judges : M.L. Joshi, J;B.P. Beri, J

Bench : Division Bench

Advocate : N.M. Kasliwal and C.L. Agarwal, for the Appellant; S.M. Mehta in Civil Revn. No. 232 of 1965, M.B.L. Bhargava and S.M. Mehta, in Misc. Appeal No. 77 of 1968, for the Respondent

Judgement

Beri, J.—On the basis of a promissory note dated 6-6-1963 Seth Budh Singh Bapna instituted a suit against Sahibzada Abdul Bais Khan of Tonk. During the pendency of the suit on 30-5-64 the plaintiff moved two applications. One was for attaching before judgment the Khandan allowance payable to the defendant and the other was to restrain the defendant from receiving the said allowance from the Collector. Tonk. and the Collector from disbursing it. The learned Civil Judge passed an ex parte order restraining the defendant from receiving and the Collector from disbursing the amount to the extent of Rs. 60,000/-. Let us recall the exact words of the restraint order because its disobedience is an important question for decision.

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vkt rkjh[k 30&5&64 dks esjs nLr[kr o eks gj vnkyr ls tkjh ls tkjh fd;k x;kk A

The order was served on the defendant on 2-7-1964. On 5-10-64 the defendant appeared and contested the application saying that the plaintiffs move was vexatious and that the Khandan allowance was not attachable.

2. Against the order of the learned Civil Judge an application by way of revision was also filed which is No. 232 of 1965, which we shall dispose of by this judgment.

3. While the matter was pending the plaintiff moved an application before the Civil Judge Tonk under Order 39, Rule 2 (3) C. P. C. stating that the defendant had withdrawn the amount of Rs. 36,556-50 from the Treasury Jaipur by Pension Payment Order No. 479 and he should be committed to civil prison. This Court had directed, in the Civil Revision, the Civil Judge to decide the question whether the amount payable to the defendant was attachable. The plaintiff led evidence and the learned Civil Judge found that the payment of Rs. 36,000/-and odd was not exempt from attachment; that the defendant fraudulently managed to draw the forbidden allowance from Treasury Jaipur and thus circumvented the order of the Court and was guilty of disobedience. He accordingly directed the attachment of the defendant's property and committed him to civil prison for two months. Defendant Sahibzada has preferred this appeal.

4. Mr. C.L. Agrawal for the appellant urged that the grant of Khandan allowance to the appellant was in the nature of a "political pension" exempt from attachment u/s 60(1)(g) of the first proviso of the CPC in view of the Tonk Khandan Rules and the Rajasthan Cash Jagir Abolition Act XXIX of 1958 read with the Rajasthan Pensions Act; and on the authority of the decided cases, viz., *Secy, of State for India in Council v. Khemchand Jeychand* ILR (1879) 4 Bom 432; *Bishambhar Nath v. Nawab Imdad Ali Khan*. (1890) 17 Ind App 181 (PC) . *Nawab Usmanali Khan Vs. Sagarmal, Muthuasami Naidu v. Prince Alagia Manavala Simmala Raja*. ILR(1903) Mad 423; *Ladhmi Narain v. Makund Singh*. ILR(1904) All 617; *Amna Bibi v. Najmun-Nissa*.ILR (1909) All 382 ; *Satraji Dongerchand Firm Vs. Madho Singh and Others, and Lala Harnam Das y. Mst. Faiyai Begum*. AIR 1922 All 22. His further submission was that the learned Civil Judge was in error in holding that the appellant disobeyed the injunction because what the appellant received or recovered was pension while he was only restrained from receiving "Ten-khwah". The restraint order was to forbid him from receiving it from Treasury Tonk and not from Jaipur from where the appellant received it and, therefore, there was no disobedience. He placed reliance on *Hazee Mohamed Kuzulbash v. Sha-zada Mohamed Buseerooddeen* (1867) 7 Suth WR 169. At the worst it was a technical breach and should be leniently dealt with and he placed reliance on *Shiv Narain Singh v. Muni Lal* AIR 1934 Lah 881.

5. On the other hand. Mr. M.B.L. Bhargava on behalf of the respondent urged that the Tonk Khandan Allowance Rules do not envisage any political pension. He

placed reliance on Ramchandra-rao v. Vithal Kashav AIR 1948 Bom 143 ; AIR 1937 202 (Nagpur) Jiban Krishna Ghosh v. Sripati Charan Dey. 8 CWN 665; Abdul Karim Khan v. State of Rajasthan. ILR (1961) 11 Raj 596 ; Bankey Behari Lal Vs. Lala Babu, Raja Babu and Another, . He submitted that the provisions of Rajasthan Pension Act apply only for mode of payment. He referred to (Shah Muhammad) (Shah Muhammad) Habibul Rahman Vs. Syed Abdul Hai and Another, and Duni Chand Telo Mal v. Gurmukh Singh AIR 1930 Lah 816. He argued that it was case of deliberate disobedience and deserved deterrent action. He referred to Bagga v. Saleh AIR 1915 PC 106 (1).

6. The points which arise for consideration are:

(i) whether the money received by Sahibzada was exempt from attachment?

(ii) whether the appellant is guilty of disobeying Civil Judge's injunction dated 30-5-64?.

(iii) Is the punishment excessive?

7. For deciding the question whether the payment received by the appellant was exempt from attachment it will be proper to refer to the relevant provisions of the Khandan Allowance Rules promulgated by the erstwhile Ruler of the Tonk State to find out the real nature of the allowance granted under the Rules in the light of the provisions of Cash Jagir Abolition Act and Rajasthan Pensions Act. Certain legitimate relations of the Nawab were to receive fixed sums of money for maintaining and promoting the dignity of the family (Rule 5). The allowance was at the Nawab's pleasure and was to cease if the member proved a wastrel (Rule 6). No debt was recoverable from it and the allowance was inalienable (Rule 7). If the member died without heir it was also to cease (Rule 14). With the merger of the Tonk State in Rajasthan the allowances ceased and in its place the compensation was awarded by the Cash Jagir Abolition Act (XXIX of 1958). The Act defined cash jagir as any "grant of money" by way of a jagir or otherwise, made or recognised to have been made by the Government or by the Ruler of a covenanted State without any consideration and enjoyed under any of the denominations or appellations specified in the First Schedule and recognised by the Government These grants were abolished from the 1st day of April, 1958. Notwithstanding such discontinuance compensation in accordance with the scale laid down in Schedule II was to be made and "the provision of the Rajasthan Pensions Act 1958 (XXVII of 1958) were to apply to such payments (Section 3). The schedule included "Khangri", "Tankha" and any other class of grant of money.

8. The Rajasthan Pensions Act while defining "grant of money" excluded from its purview the grants made under the Rajasthan Cash Jagirs Abolition Act 1958 (Section 2 (i)). Civil suits are barred for obtaining "grants of money" and "pensions" (Section 3) excepting after obtaining a certificate from Collector concerned (Section 5). Section 4 provides the mode for making claims to the Collector. Section 6 lays down that subject to rules the Collector shall pay the "pensions" and "grants of money" and Section 7 permits commutation with the

consent of the grantee. Section 8 exempts the pensions from attachment. All assignments agreements, orders sales and securities, in anticipation of pensions and grants of money are declared null and void (Section 8). Government dues therefrom are however recoverable (Section 9).

9. This Court while dealing with Tonk State Khandan Rules of 1944 has in Abdul Karim Khan's case ILR (1961) Raj 596 held that the cash jagir as defined in the Rajasthan Cash Jagir Abolition Act "seems to include" the type of allowance mentioned in the Tonk Khandan Rules 1944, We are in respectful agreement with this view.

10. Before we advert to the various cases cited before us we would prefer to examine the argument urged by Mr. Agrawal whether u/s 8 of the Rajasthan Pensions Act the allowance granted to the appellant was protected against attachment. The relevant statutory provisions touching the argument deserve to be quoted. Section 3 (2) of the Cash Jagir Abolition Act reads:

"(2) Notwithstanding such discontinuance and abolition the State Government shall continue to make payments by way of compensation in accordance with the scale laid down in the Second Schedule, and the provisions of the Rajasthan Pensions Act, 1958, shall apply to such payments."

11. Section 2 (i) and Section 8 of the Rajasthan Pensions Act read:

"2. Definitions.-- In this Act, unless the subject or context otherwise requires,--

(i) "grant of money" includes any amount payable on the part of the State Government in respect of any right, privilege, perquisite or office; but does not include a cash jagir to which the Rajasthan Cash Jagirs Abolition Act, 1958 applies;"

"8. Exemption of pension from attachment,-- No pension granted or continued by the State Government on political considerations or on account of past services or present infirmities or as a compassionate allowance. and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court, in the State, at the Instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such Court."

12. The Rajasthan Pensions Act 1958 (27 of 1958) received the assent of the Government on 22-5-1958 and the Rajasthan Cash Jagir Abolition Act 1958 (29 of 1958) received the assent of the President On 13-7-1958. The Pensions Act throughout employs two distinct expressions viz. "Pensions" and "Grant of money." While pension has not been defined, from the definition of the return "grant of money." Cash Jagir as defined under the Cash Jagir Abolition Act has been specifically excluded. If the allowance under the Tonk Rules 1944 was neither "grant of money" nor "pension" what could be the purpose of applying the provisions of the Pensions Act to the Cash Jagir Abolition Act? The argument of Mr. Bhargava was that it was merely made applicable for the "mode of

payment, We are unable to agree. The scale of payment has been laid out in the Second Schedule of the Cash Jagir Abolition Act. Section 5 of the Act empowers the State Government to make rules and Section 7 confers powers on the State Government to remove difficulties. The mode of payment could well have been prescribed under the rules. The Pensions Act already came on the Statute Book on 22-5-1958 and the Abolition of Cash Jagir Act followed it. The Pensions Act primarily aims at two purposes. The first is that no suit to enforce the demand for a pension or grant of money could be instituted except upon a certificate to be issued by the Collector. And the second was to protect the pensions as distinguished from "grant of money" from attachment. In our opinion under the Pensions Act all payments governed by it are either "grant of money" or "pension" because the allowance under Tonk Rules 1944 is a cash jagir under the Cash Jagir Abolition Act, and the same having been expressly excluded from the definition of "grant of money" it cannot be anything except pension envisaged by the Pensions Act.

13. Mr. Bhargava, however, contended that it is not all kinds of pensions which are exempt from attachment under Section 8 of the Rajasthan Pensions Act but only those which have been specified therein. If we refer to the language of Section 8 of the Pensions Act it would be correct to say that the allowance under the Tonk Rules is neither on account of "past services" nor "present infirmities." We shall have to examine whether this pension is on account of (a) political considerations, or (b) as a "compassionate allowance." In support of respective contentions as to the attachability of Khandan allowance, counsel have cited various authorities which we have already noticed. Let us now examine some of them.

14. In the ILR 4 Bom case, the question for decision was whether a "Hara-garashak" in the hands of the Mamlatdar, was exempt from attachment by virtue of Section II of the Pensions Act 1871. That section is analogous to Section 8 of the Rajasthan Pensions Act, 1958. It will be useful to recall the language of Section 11 of the Pensions Act 1871. It reads

"11. Exemption of pension from attachment. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due On account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

The learned Judges observed.-

"It follows that, in our opinion, the word "pension" in Section 11 is used in its ordinary and well-known sense, viz. that of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite or office but On account of past service or particular merits, or as compensation to dethroned princes,

their families, and dependents. It seems to us impossible to bring a toragaras Irak within this meaning of the word "pension" and, indeed, if we are right in our conclusion, that the word "pension" denotes something different from "a grant of money or land revenue, it follows that, as we have already in the cases referred to held that a toragaras hak comes within the definition of grant of a money or land revenue, we could not now consistently hold that it comes within the meaning of the word "pension." "

15. In Bishambhar Nath's case (1890) 17 Ind App 181 fPC) their Lordships of the Privy Council considered about a monthly allowance which the Government of India had given a guarantee that it will pay by a treaty obligation contracted with another sovereign power. Malka Jahan was the principal consort of Mohammad Ali Shah, the last King of Oudh. The King in (1838?) advanced Rs. 17,00,000 to the Government of India in pursuance of a formal treaty by which the latter undertook to apply the interest of that sum in payment of allowances to certain members of the royal family and household, including his spouse. Malka Jehan and their respective heirs in perpetuity. In the treaty, these allowances were described as "pensions." Subsequently the King of Oudh advanced in loan to the Indian Government Rs. 12,00,000/- which he intended to settle as an additional provision for Malka Jehan and her heirs. The Governor-General by his letter dated the 15th of February, 1842 intimated "his pleasure in concurring with the hearty desire and wishes of his Majesty" and gave the assurance that an order would be duly passed for their execution. A question arose whether it was a political pension u/s 226 (g) corresponding, to Section 60(1)(g) of the current Civil Procedure Code. Quoting the view expressed by Sir Barnes Peacock in Nawab Sultan Mariam Begum v. Nawab Sahib Mirza. (1888) 16 Ind App 175 (PC) their Lordships held that a pension which the Govt of India had given a guarantee that it would pay, by a treaty obligation contracted with another sovereign power, it appeared to their Lordships to be in the strictest sense, a political pension. The obligation to pay, as well the actual payment of the pension, must, in such circumstances, be ascribed to reasons of State policy and it was held to be exempt.

16. The word "pension" in Section 60(1)(g) of the CPC came to be considered in Nawab Usmanali Khan Vs. Sagarmal, the ruler of the former Indian State of Jaora had money dealings with the respondent. By an award the arbitrator found a sum of Rs. 1,60,000/- due to the respondent from the Nawab and their Lordships of the Supreme Court following the dictum of Bishambhar Nath's case (1890) 17 Ind App 181 (PC) held that on the coming into force of the Constitution of India the guarantee for the payment of periodical sums as privy purse was continued by Article 291 of the Constitution but its essential political character was preserved by Article 363 and the obligation under this guarantee could not be enforced in any municipal court, and the privy purse satisfied all the essential characteristics of a political pension, and as such, is protected from execution u/s 60(1)(g) of the CPC and the case reported in Nawab Usmanalikhan Vs. Sagarmal, was reversed.

17. In Muthusami Naidu's case ILR(1903) Mad 423 certain descendants of the family which formerly reigned in Ceylon, resided in British India, where the Collector of the district, on behalf of the Government of India, paid them pensions. These pensions were attached in execution of certain decrees and the learned Judges of the Madras High Court held following the dictum of Bishambhar Nath's case that it was protected from attachment. The learned Judges observed,--

"That the pensions with which we are concerned were in their origin "political pensions" that is pensions granted or paid by a State for reasons of State seems to me to admit of no doubt nor is there anything before us to indicate that the allowances have lost their character as political pensions by reasons of the arrangement by which the payments are made by the officers of Government in India. Rather does it emphasise the truly political character of the pensions. The section does not restrict the exemption to political pensions granted by the Government in India, and I do not think that we would be justified in adding such a limitation to the plain words of the section."

18. In Lachmi Naram's case ILR(1904) All 617 the Government granted certain Jamindari villages subject to payment of land revenue as a reward for services rendered by Ganga Bakhsh to the Government. The learned Judges followed ILR 4 Bom case and held that it was no pension.

19. In Amna Bibi's case (1909) ILK 31 All 382. Kadir Bakhsh a Pindari Chief from whom appellants had descended, was granted a political pension of Rs. 4,000/- a year. In lieu of the pension a revenue free Jagir consisting of 27 villages in one Taluqa in Gorakhpur was granted. The question was whether it was a political pension exempt u/s 266(g) of the CPC 1882. It was held that the zamindari so granted was not a pension within the meaning of Section 11 of the Pensions Act.

20. In Satraji Dongerchand Firm Vs. Madho Singh and Others, the Maharaja of Panna was deposed by the Government of India and an allowance declared by Regulation III of 1818 was increased to Rs. 2,000 per month and a question arose whether it was a political pension. The learned Judge after referring to cases observed:--

"It seems to me that there is nothing in the Pensions Act to exclude allowances granted by the British Government to political prisoners from its operation in cases where the British Government by some arrangement, with a foreign State collects the allowance which it fixes, from the Foreign State."

And it was held to be a pension exempt from attachment.

21. In Lala Harnam Das's case AIR 1922 All 22 a grant was made by the Emperor Akbar for the support of the descendants of Salim Chishti. the famous saint whose mausoleum at Fateh-pur Sikri is one of the most renowned ancient monuments in Northern India. This fund was not only to be devoted for the preservation of the tomb but also to the maintenance of certain religious services

and the provision of an allowance for the Saint's descendants of whom the defendant Faiyazi Begam was admittedly one. The question was whether it was a pension covered by Section 11 of the Pensions Act and the learned Judges after following 4 Bombay case observed that it was a pension and the assignments thereof were null and void.

22. In Hazee Mohamed Kuzulbash's case (1867) 7 Suth WR 169 it was held that the original stipend allowed to the members of the Mysore family could not be attached.

23. In Ramchandrarao's case AIR 1948 Bom 143 the learned Judges considered what was a political pension. They said,--

"According to strict etymology, "pension" ought to mean nothing more than payment; in theory it would cover every possible payment, but in practice it does not. It is not altogether easy to say whether a cash allowance on service lands for which the service has been commuted into an annual fixed payment amounts to a pension or not. But even if it does amount to pension, we are satisfied that it is not in any sense a "political pension"."

And then the learned Judges have referred to some of the cases which we have already examined.

24. In AIR 1937 202 (Nagpur) . Bose. J. considered the case of a grant which was renewed by the Bhonsla Raja oi Nagpur and continued by the British Government, where certain cash, allowances and landed inams, the Viceroy and Governor-General in Council was pleased to order a cash allowance for the judgment-debtor and the learned Judge observed that the pension as used in CPC implies periodical payment of money in payment to the pensioner but the rents and profits realized by the judgment-debtor from such inam lands were not drawn fay him as a pensioner and were not drawn u/s 60(1)(g) of the Civil Procedure Code.

25. In Jiban Krishna Ghosh's case 8 CWN 665 the learned Judges examined a grant of an annual sum made by the Government as a compensation for loss sustained by the grantee on occasion of improper resumption by Government of rent-free lands formerly belonging to the grantee and held that it was no pension within the meaning of Section 11 of the Pensions Act.

26. In Bankey Behari Lal Vs. Lala Babu, Raja Babu and Another, the learned Judges observed.-

"The word "pension" has not been defined in the Act, but the meaning assigned to it in the "Secretary of State v. Khemchand Jeychand" 4 Bom 432 has been accepted by all the High Courts. The word "pension" has been held to mean a periodical allowance or stipend granted not in respect of any right, privilege perquisite or office, but on account of past service or particular merits or as compensation to dethroned princes their families and dependants. In Section 4 onwards in the Pensions Act the word "pension" has been used in contradiction

to the words "grant of money or land revenue".

In this case in the days of Emperor Barbar the land revenues of a half share of village Lakhanpur and another village were assigned to some ancestor of plaintiff and the defendants. Raja Babu and Motilal. in lieu of his past services as a Hakim, The question was whether it amounted to pension to which Sections 11 and 12 applied and the learned Judges said that it did not.

27. The aforesaid cases lead us to the conclusion that the ingredients of a political pension can be safely gleaned from two cases namely ILR(1879) 4 Bom case and Bishambhar Nath's case (1890) 17 Ind APP 181 (PC) . The political pension does not arise from "right, privilege perquisite or office but on account of past services or particular merits or as compensation to dethroned princes, their families and dependants". As against this where as a result of some "treaty obligation contracted with another sovereign power" periodical payment is made it would be a political pension in the strictest sense. The question is whether the grant to the appellant Sahibzada is a "political pension" within the meaning of the term employed in Section 60(1)(g) of the Code of Civil Procedure? Our answer to the question is in the affirmative. Mr. Bhargava. learned counsel for the respondent, urged that the persons entitled to Khandan allowance under the Tonk Rules were entitled as of right because it was the duty of the then Ruler of Tonk to maintain them. We are unable to agree. From the trend of the rules and particularly with reference to Rule 6 it is transparently clear that the allowance was at the pleasure of the Ruler and was granted for maintaining the dignity of the family. No provision of Jaw has been shown that it was obligatory On the Ruler to maintain the members of his family. After the former Ruler of Tonk surrendered the State under Covenant he was granted a Privy Purse which has been held by the Supreme Court in Nawab Usmanali Khan Vs. Sagarmal, as "political pension" despite the fact that privy purse was assured and guranteed under Article 291 of the Constitution of India. On the analogy of a dethroned King the members of the family of a Ruler who had surrendered his State were granted certain allowances and for that purpose the Cash Jagir Abolition Act was enacted. This is clearly within the concept of political pension judicially approved right from the time of the ILR 4 Bom case. We see no reason to take a different view. In our opinion a political pension is a periodical allowance granted to attain a political end. The entire resources of the State of Tonk came to be acquired by the State of Raiasthan and it was politically considered just end proper to pay certain allowances to certain grantees enumerated in Schedule I of the Act for the period and at the rate specified in Schedule II thereto. We are accordingly of the view that payments made to Sahibzada under the Cash Jagir Abolition Act is in the nature of a political pension within the meaning of Section 60(1)(g) of the CPC and therefore exempt from attachment.

28. Section 11 of the Pensions Act 1871 and Section 8 of the Rajasthan Pensions Act employ identical phraseology viz. "No pension granted or continued by Government on political considerations, or on account of past services or present

infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such court."

29. The decided cases, we have referred above, have revolved round the provisions of Section 11 of the Pensions Act 1871. The true meaning of these phrases could not be any different in the Rajasthan Pensions Act. At any rate whether the payment is made for "political consideration" or by way of "compassionate allowance" it is protected from attachment u/s 8 of the Rajasthan Pensions Act.

30. Now we advert to the second question whether the appellant is guilty of disobeying the Civil Judge's injunction order dated 30th May, 1964. We might repeat the facts for appreciation of the arguments advanced in this behalf. The application for attachment was made on 30th May, 1964. The order of restraint was served on the appellant on the 2nd of July, 1964. He filed objections to the order of injunction and attachment on 5-10-64. Thereafter he made an application on 24th March, 1965 to the Treasury intimating that he has changed his residence from Tonk to Jaipur and that he be paid Ms allowance at Jaipur. Mr. C.L. Agarwala urged that the appellant was only forbidden from receiving his "Tankhwah," and what he received from the Government was not "Tankhwah" but pension. He further urged that he was forbidden from receiving his "Tankhwah" from the Collector. Tonk only but he received it not from the Collector Tonk but from the Treasury Jaipur and, therefore, he was not guilty of any disobedience. The arguments of Mr. Agarwal are entirely untenable. Firstly, it is nobody's case that the appellant was in receipt of any "Tankhwah" or salary from the State of Rajasthan. Secondly the appellant himself understood from the word "Tankhwah" to be the allowance which he was to receive from the Government under the Rajasthan Cash Jagir Abolition Act. In this connection it will be pertinent to note that in paragraph 3 of his objection dated 5-10-64 the appellant has referred to the allowance that he was going to receive as "Tankhwah". In untechnical common parlance, therefore, the appellant understood his allowance to be his "Tankhwah" and he clearly understood what He was being restrained from receiving. His making an application to the Secretary to the Government for changing of his address from Tonk to Jaipur evidences the fact of his being conscious of the restraint order and an effort to evade it. The appellant circumvented with the language of the restraint order by shifting his own address from Tonk to Jaipur. But in our opinion the essence of the restraint order was that he was not to receive from the Government the "Tankhwah", namely, the allowance he was to receive whether it was paid at Jaipur or at Tonk. In fact by adopting this strategy the disobedience of the injunction can safely be characterised as designed and deliberate and therefore, all the more reprehensible. John George-Woodroffs in his Tagore Law Lectures, paragraph 27. has stated the law thus:

"27. The granting of Injunctions being justly regarded as one of the highest prerogatives of Courts of Equity, the most exact and implicit obedience is required from those against whom the mandate of the Court is directed. With whatever irregularities the proceedings may be effected, or however erroneously the Court may have acted in granting the Injunction in the first instance, it must be implicitly obeyed as long as it remains in existence....."

This in our opinion is the correct position of the law. Even though the allowance payable to the appellant may be exempt from attachment, as we have held it to be the appellant was duty bound to obey the same and he not only disobeyed it but contrived to disregard it and his disobedience, therefore, is not merely technical.

31. The attachment of the property of the appellant in the circumstances of the case is not justified under the law. Order 39. Rule 2 (3) and (4) read:--

"(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit and shall pay the balance, if any to the party entitled thereto."

32. In case of disobedience, or breach of any terms of injunction the Court granting an injunction may inflict the punishment either (a) by ordering the attachment of the property of the person guilty of such disobedience or (b) by ordering the person to be detained in the Civil prison for a term not exceeding six months unless in the meantime the Court directs his release. The purpose and duration of the attachment of the property are specified in Sub-rule 4. It shall not be for more than one year and if at the end of the year the Court finds that the disobedience or breach continues the property may be sold and the Court may award compensation if it thinks fit out of the sale-proceeds. This sub-rule is designed to enforce continued obedience a failure in which is to be visited by the consequences indicated. In the circumstances of the case and in the light of the view we have taken about the non-attachability of the allowance the attachment is not justified and is therefore set aside.

33. Regarding the question of sentence of two months" simple imprisonment we must confess, it has caused us anxious thought. The jurisdiction conferred for punishing a contumacious party is to vindicate the supremacy of the Rule of Law and not to benefit parties. The Court is not concerned with the legal effect of the order. The test is whether the authority has been disregarded. The answer is plain that the appellant contrived to get round the Court's mandate. And in this

view of the matter we cannot treat it as a mere technical disobedience arising out of some misunderstanding. We are accordingly of the view that a sentence of 7 days simple imprisonment will serve the ends for which the rule has been enacted. We therefore, reduce the sentence of two months to one of seven days.

34. In the S. B. Civil Revision No. 232 of 1965 the grievance raised is that the learned Civil Judge. Tonk. had no jurisdiction in the circumstances of the case to have attached before judgment the allowance that was to be received by Sahibzada Abdul Bais Khan contrary to the conditions laid down in Order 38, Rule 5, C. P. C. and further that it was not attachable. To the extent that the allowance was not attachable, we allow the revision No. 232 of 1965. We do not agree with the contention that no grounds existed for ordering attachment before judgment. Circumstances already discussed by us clearly indicate that there was every good reason to issue an order pursuant to the provision of Order 38. Rule 5. C. P. C. Accordingly the revision is partly allowed.

35. The appeal also succeeds to the extent that the allowance payable to the appellant Sahibzada Abdul Bais Khan is exempt from attachment, but he was clearly guilty of disobedience and rightly punished. We uphold the punishment but reduce it to 7 days simple imprisonment. The attachment of the property is set aside and thus the appeal is partly allowed.

36. There will be no order as to costs in the revision as well as in the appeal.