(1932) 02 PAT CK 0004

In the Patna High Court

Secretary of State APPELLANT

Vs

Jamuna Das RESPONDENT

Date of Decision : 24-02-1932

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 60

Citation : AIR 1932 Patna 311

Hon'ble Judges : Courtney-Terrell, C.J;Fazl Ali, J

Bench : Full Bench

Judgement

Courtney-Terrell, C. J.

1. This is an appeal from an order of the District Judge of Patna in an insolvency case. The insolvent, John Herbertson, was a guard in the service of the E. I. Ry. The relationship between the guard and his employers the Railway were such that he was paid a salary and it was the custom of the Railway at the conclusion of the service of any of their servants to make a gift depending upon the quality of the service rendered by the retiring servant and his rank and the length of the service. It is expressly pointed out in the rules published by the Railway for the use of their servants that such gratuity is not payable until the end of the service and it is entirely at the discretion of the Railway and there is no contract of any kind on the part of the Railway with any of their servants that they will pay any gratuity to the servant on his retirement.

2. The insolvent borrowed a sum of money from a firm, called Jamuna Das and brothers and then filed his application to be declared an insolvent on the ground that he was unable to pay his debts. He was about to retire from the service of the E.I, Ry. and the creditor Jamuna Das made an application to the Judge in the insolvency proceedings for leave to attach the gratuity which they anticipated would be paid to the insolvent upon his retirement. The District Judge who was at that time the incumbent of the office decided that the insolvent had not in fact relinquished service and that the amount of the gratuity which he would or might obtain from the Railway in future could not be attached because it had not been

ascertained nor had it been paid over to him. The insolvent then left the country and it became known to the creditor that it was the intention of the company to pay him a sum of money which they had decided was to be his proper gratuity under their practice and he once again applied to the District Judge saying that the amount of the gratuity had now been ascertained and furthermore shewing that a letter had been written by the Railway to the insolvent in Europe asking him to nominate a bank or other agent to receive the gratuity which it was their intention to pay him and that the insolvent had replied nominating a certain bank to receive the money. He asked the District Judge in these new circumstances to attach the amount of gratuity which was at the time of the application, and is still, in the hands of the railway administration.

3. The railway however declined to pay over the amount of the gratuity for the benefit of the creditor and the District Judge called upon them to appear and offer any observations by their legal representative which they might think fit on the situation. They did so appear and at the conclusion of the argument the learned District Judge delivered a judgment in which he directed that a letter should be written to the railway directing the payment of the gratuity into Court and also ordered that the costs of the hearing should be paid by the Railway administration to the creditor.

4. The law applicable to this set of circumstances is really very simple. The sum of money in the hands of the railway can only be attached if it is the property of the insolvent and in no other circumstances. If it be shewn either that the insolvent could sue the railway administration to recover the amount of the gratuity or if it can be shewn that either the railway or any other person held the particular sum of money in trust for the insolvent, in either of these circumstances the money could be recovered for the benefit of the creditor. The evidence clearly indicates that neither oft these circumstances exists. In the first place there was no contract on the part of the railway with their employee that they would pay him this gratuity. An attempt has been boldly made by Mr. Bose on behalf of the creditor to urge that the past services of the insolvent to the railway coupled with the intimation to the insolvent by the railway that in consideration of those past services a particular sum would be paid to him constitute a binding contract on the part of the railway administration to pay over the specified sum to the insolvent which contract he would be able to enforce at law and that therefore the sum should properly be considered as the property of the insolvent in the hands of the railway administration. This proposition was argued with great force and skill and in support of it two cases were cited by Mr. Bose. The first is the case of Mahommad Abdulla v. Jiwan Mal AIR 1924 Lah. 688, a decision of a single Judge of the Allahabad High Court.

5. In that case the learned Judge decided the substance of the case on other grounds but at the conclusion of his judgment he stated his opinion that inasmuch as in that case it had been decided by the donor and intimated to the donee that the gratuity would be paid to him and inasmuch as the gratuity was in

consideration of past services rendered to the body which gave the gratuity, it constituted a debt which could be attached u/s 60, Civil P.C. That statement was however not necessary for the decision of the case and is in the nature of obiter dictum and in any case I feel myself unable to agree with it as a proposition of law. The other is the case of P. Kanakasabapathy Mudaliar Vs. Hajee Oosman Sahib and Others, , and Mr. Bose relies upon the judgment of one of the Judges who was a member of the tribunal, it being conceded that the judgment of the other Judge, which was sufficient for the case, was decided upon another point altogether.

6. The learned Judge agreed with the judgment of his colleague but offered his opinion that in a case where services were rendered by the servant in exchange for the stipulated salary but there was also the promise of the grant of a bonus it could not be held in that case that there was a promise by the employers founded upon past consideration. In any circumstances even the decision of that learned Judge in that case does not support the proposition for which it has been cited and if it did, it was obiter dictum, and, in any case, I venture with great respect to think that it is erroneous.

7. The same matter has received attention in other Courts and in the case of Natha Gulab and Co. Vs. W.C. Shaller and G.I.P. Railway Company, , it was laid down that a transfer intended to operate as a gift, but invalid as such, would not constitute the donor a trustee of the property for the intended donee, in other words, an imperfect gift will not be construed as a declaration of trust. In that case a Railway company had sanctioned a gratuity to one of their employees on his retirement and had sent the amount to their bankers for payment to the ex-employee and it was held that that was not equivalent to delivery even though it was coupled with a request in that case to remit the money to the office of the company in London for actual payment to the ex-employee. In short this gratuity was in my opinion, a gift and was not in the nature of a debt which would be legally recoverable by the ex-employee and being a gift it was not completed until actual payment of the sum of money. It was urged by Mr. Bose that the intimation that the gift was to be made and the intimation of the precise sum that was to be paid was equivalent to payment just as in the case of the sale of goods where there may be constructive delivery but the analogy is misleading because in the case of constructive delivery of goods the goods must be specifically ascertained capable of identification and separation from other goods of their kind. In this case it is clear that the mere statement that so many rupees were payable to the employee is not the setting aside of any specific currency for the benefit of the employee. It is therefore clear that the gratuity is neither a recoverable debt in the hands of a person who could be compelled to hand it over to the employee nor is it in the nature of a completed gift which once it had passed out of the hands of the donor might be attached in the proceedings.

8. The learned Judge who decided this case has, I think, with respect to him fallen into an error of logic. He has put the case in this way. He said that because

the employee had it left open to him to direct the railway as to the person who was to receive the money that would indicate that he had power of disposal of the gift and that therefore it was property capable of attachment and could be seized for the benefit of the creditor. The logical mistake is that the gift is not at the legal disposal of the recipient until it has become the property of the recipient, in other words, the error of logic is in the nature of petition principle. In my opinion the decision of the learned Judge was erroneous and must be set aside and the contesting creditor should pay the costs throughout.

Fazl Ali, J. 9. I agree.

