(1983) 04 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Pauper Application No. 2 of 1979

Smt. Ram Murti Gautam and Others — APPELLANT

Vs

State of H.P. and Another — RESPONDENT

Date of Decision : 27-04-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, 60, 60(1), 60(1)(A)

Citation : (1983) 12 ILR HP 124

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : Kedar Ishwar, for the Appellant; K.D. Sud, for the Respondent

Judgement

V.P. Gupta, J.—The applicants have filed this application seeking permission to sue as indigent persons.

2. The applicants have alleged that applicant No. 1 is the widow and applicant No. 2 is the minor son and applicants Nos. 3 to 5 are the minor daughters of late Shri Krishan Gopal Gautam. Shri Krishan Gopal Gautam was employed as a clerk in the Office of Conservator of Forests at Nahan and was drawing total emoluments to the tune of Rs. 523.50 paise. He was taken ill in the month of January, 1978 and was admitted in Civil Hospital, Nahan. His condition did not improve although he was under treatment of Dr. Devinder Oberoi (Respondent No. 2). Dr. Oberoi remained negligent in his duties due to which the condition of Shri Gautam became serious. The relations of Shri Gautam requested Dr. Oberoi to refer the case to P.G.I. Chandigarh, but these requests were turned down. Ultimately, Shri Gautam was taken to P.G.I. Chandigarh by his father on 31st January, 1978 and was admitted in an emergency ward. Dr. Oberoi (Respondent No. 2) did not even supply the history-sheet and other relevant information to the P.G.I. doctors. Shri Gautam died on 6th March, 1978.

3. The applicants have now claimed an amount of Rs. 1,45,640/- on account of damages suffered by them on account of the death of Shri Krishan Gopal Gautam.

4. It is alleged that the applicants are indigent persons and are not "possessed of sufficient means" to enable them to pay the requisite court-fee.

5. The Respondents have contested the claim of the applicants and have alleged that they are not indigent persons.

6. The parties were allowed to lead evidence on the question as to whether the applicants are indigent persons or not.

7. The applicants produced Shri Shyam Sarup Gautam (AW 1) who states that the applicants do not own any immovable property and are not in a position to pay the requisite court-fee.

8. Shrimati Ram Murti Gautam, Petitioner No. 1 (AW 2) states that after the death of her husband she received Rs. 5,000/- by way of ex-gratia grant and Rs. 4,000/- and odd on account of General Provident Fund. She also states that she received Rs. 4,188/- on account of gratuity on the death of her husband. She further states that she has spent the whole amount of Rs. 14,000/- and odd received by her as she had to raise loans during the illness of her husband for medical expenses and that her husband was indebited to one Nav Yug.

9. In cross-examination she admits that she has an account in the United Commercial Bank where the amount of pension is credited and that she was paid Rs. 4,000/- by the Forest Department on account of the expenses incurred by her on the treatment of her husband. She also states that she received this amount only last year, (i.e. in 1981). She undertook to produce the pass-books of the bank and stated that her jewellery was stolen but she did not lodge any report.

10. Shri Sadhu Ram (AW 3) states that Smt. Ram Murti (Petitioner) took a loan of Rs. 2,500/- from him diving the illness of her husband and that this loan was paid back in 1981.

11. Smt. Ram Murti, Petitioner No. 1 (AW 2) was re-called on March 23, 1983. She admitted that on the date of filing of the present application she had two fixed deposit receipts in her favour. One was for Rs. 4,000/- and another for Rs. 3,000/-, and both these receipts were issued by the Himachal Pradesh State Co-operative Bank, Nahan. She stated that she raised a loan of Rs. 5,000/-against these fixed deposit receipts in May, 1982 and she deposited the amount so raised in a fixed deposit receipt in the post office.

12. The Respondents did not lead any evidence.

13. Mr. Kedar Ishwar appearing for the applicants contends that the amounts disclosed by Petitioner No. 1 are not liable to attachment as they pertain to the gratuity, ex-gratia payments, General Provident Fund, and the family pension. He contends that under Order XXXIII, Rule 1 of the CPC (referred to as the Code) read with Section 60 of the Code these amounts are exempt from attachment and possession of these amounts does not mean that the applicants are

''possessed of sufficient means''.

14. Mr. Kapil Dev Sood appearing for Respondent No. 2 contends that these amounts are not exempt from attachment and Section 60 of the Code is not applicable to these amounts. It is contended that the applicants have concealed facts with mala fide intentions.

15. I have considered the contentions of the learned Counsel for the parties.

16. According to the statement of Shrimati Ram Murti Gautam, applicant No. 1, she had a fixed deposit of Rs. 7,000/-at the time of the filing of the application. The aforesaid amount is still lying in her name because the loan of Rs. 5,000/- raised by her against the fixed deposit receipts was again deposited in the post office. Thus according to her statement, she was possessed of this amount on 23rd March, 1983 also. Besides this she admitted that she received Rs. 5,000/- as ex-gratia grant and Rs. 4,000/- and odd as General Provident Fund, and Rs. 4,188/-as gratuity on the death of her husband. She has also admitted that she received Rs. 4,000/- from the Forest Department on account of expenses incurred by her for the treatment of her husband.

17. This application was filed on 3rd March, 1979. It is not proved that these amounts were not available with her at the time of filing of this application. In the application she has further stated that she is getting a consolidated amount of Rs. 496.60 as her pay and that she is also getting family pension of Rs. 174/- per month.

18. Order XXXIII Rule 1 reads as follows:

"1. Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation I.-A person is an indigent person,

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II.-Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III.-Where the Plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity."

19. Properties exempt from attachment arc mentioned in Section 60 of the Code.

The learned Counsel for the applicants relied upon Section 60(g), (i), (k) and (ka) of the Code which read as follows:

"60. Property liable to attachment and sale in execution of decree.

(1) xxx xxx xxx

Provided that the following particulars shall not be liable to such attachment or sale, namely:

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;

(i) salary to the extent of four hundred rupees and two-third of the remainder in execution of any decree other than a decree for maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-lour months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, for the time being applies in so far as they are declared by the said Act not to be liable to attachment; (ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968, for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;".

20. The stipends and gratuities allowed to pensioners and their salary to some extent, the compulsory deposits, and the deposits to which the Public Provident Fund Act, 1968 applies, are not liable to attachment. The applicants, in the present case, are the heirs of the deceased. The amounts which are exempt from attachment, as mentioned in Section 60 of the Code, are those amounts which remain in deposit with the employer/Government for the benefit of the employee. Once these amounts are released by the Government and are paid these amounts are not exempt from attachment. For example, if the gratuity is paid to the heirs or legal representatives of the deceased persons, then the amounts so paid lose their character of gratuity.

21. In Union of India (UOI) Vs. Radha Kissen Agarwalla and Another, it was held by the Supreme Court that the Provident Fund as long as it remains under the control of the Railway Administration is exempt from attachment because the Union of India is a trustee for the subscribers.

22. In Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, it was

held in para 11 of the judgment:

11. We may state without fear of contradiction that provident fund amounts, pensions and 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.

(Emphasis supplied)."

23. In Dashrath Piraji Date v. Mahadeo N. Kane and Anr. 1983 (1) S.L.R. 474, while interpreting Section 60(1)(h) of the Code regarding wages of labourers and domestic servants whether payable in money or in any kind, it was held that when such wages are received by the person concerned, then they cease to be wages and the prohibition u/s 60(1)(a) of the Code against attachment cannot apply.

24. Similarly in Joseph Benjamin Bonjour (Insolvent) Vs. The Official Assignee of Madras, it was again held that when monies are paid over to the subscriber or depositor from the Provident Fund, then they are not exempt from attachment.

25. It is thus, clear that as long as the money with respect to Provident Fund, gratuity, compulsory deposits, etc. remain with the Government for the benefit of the subscriber, then these monies are exempt from the attachment because the Government is a trustee for the subscribers. But as soon as this money is paid to the subscriber, then such money loses that character and is liable to attachment in the hands of the subscriber.

26. In the present case the money whether of the gratuity or of the Provident Fund was paid to the applicants, i.e. legal heirs. Thus, it cannot be said that the money received by the applicants as gratuity, Provident Fund, etc. is exempt from attachment in their hands.

27. Shrimati Ram Murti has suppressed all these facts with a mala fide intention. According to her she is possessed of cash amounts in the shape of deposits with the bank or the post office and these deposits are in excess of the amount required for payment of court-fee. The court-fee required to be paid is Rs. 3808/- while the amounts in deposit with the applicants are in excess.

28. Applicant No. 1 is also getting pay and family pension.

29. Thus, taking all the circumstances into consideration it is not proved that the applicants are indigent persons.

30. In view of the above discussion, the applicants cannot be permitted to sue as indigent persons. The applicants can pay the requisite court-fee within a period of one month from to-day.

