

(1950) 05 CAL CK 0046
In the Calcutta High Court
Case No : A.F.O.O. No. 41 of 1950

Union of India (UOI)

APPELLANT

Vs

Sm. Hira Debi and Another

RESPONDENT

Date of Decision : 17-05-1950

Acts Referred:

Provident Funds Act, 1925 — Section 3, 3(1)

Citation : AIR 1951 Cal 25 : 54 CWN 840

Hon'ble Judges : Harries, C.J.;Sinha, J

Bench : Division Bench

Advocate : A.N. Roy, for the Appellant;Sanat Mukherjee, for the Respondent

Judgement

Sinha, J.—This is an appeal by the Union of India against an order of Banerjee J., dated 19-12-1949, dismissing an application made pro interesse suo on behalf of the Dominion of India. The only question involved in this appeal is whether a Receiver can be appointed by way of equitable execution in respect of money standing to the credit of a subscriber to a provident fund. The answer to the question depends on the construction of Section 3, Provident Funds Act, 1925 (XIX [19] of 1925). Banerjee J. held that a Receiver can be appointed in a suitable case over provident fund money.

2. The facts out of which this appeal arises may be shortly stated. On 30-7-1948, a decree was made by this Court in this suit in favour of Hira Debi for Rs. 3,317 with interest and costs. On 17-12-1948, the decree-holder applied for execution of the decree by appointment of a Receiver of the amount lying to the credit of the provident fund of the judgment-debtor, Ram Garhit Singh, with the Post Master General, Bengal Circle, and with the Deputy Accountant General, Posts and Telegraphs, Calcutta. The judgment debtor was a clerk in the dead letter office and had retired in January 1947. On 1-2-1949, Banerjee J. made an order whereby the decree-holders' husband, Baramdeo Pandey, was appointed Receiver in execution of the said sum, subject to his furnishing security. No objection to the order has been raised on behalf of the judgment-debtor. On

16-9-1949, a summons was taken out on behalf of the Dominion of India for setting aside the order on the ground that it was invalid inasmuch as a Receiver cannot be appointed in respect of provident fund money.

3. Section 3, Provident Funds Act, is in the following terms :

"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 depositor, 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 deposit." The section provides that a compulsory deposit:

(a) is not capable of being assigned or charged;

(b) is not liable to attachment under any decree or order of any civil or criminal Court in respect of debt or liability incurred by a depositor;

(c) cannot be claimed by the Official Assignee or a Receiver appointed under the Provincial Insolvency Act. It will be seen that the section does not in terms prohibit the appointment of a Receiver in execution over provident fund money. It is, however, submitted that the object of Section 3 is to prevent execution being levied on provident fund money, whether the execution takes the form of attachment or of appointment of a receiver in execution, and the section should be construed as including a prohibition to levy execution on provident fund money by the appointment of a receiver.

4. The ordinary rule is that in construing enacted words, the ordinary and grammatical sense of the words used must be adhered to, unless it would lead to some absurdity or repugnancy or inconsistency. If the language used is clear and unequivocal, it ought to be enforced, regardless of the wisdom or the policy of the enactment. Counsel for appellant relies on the case of the Secretary of State v. Bai Some 57 Bom. 507 : (A.I.R. 1933 Bom. 350) where the Court declined to appoint a receiver in execution over the plaintiff's maintenance recoverable out of a house in suit. In that suit the plaintiff filed a suit as a pauper claiming possession of a house. The suit ended in a compromise on the terms that the plaintiff should receive Rs. 96 a year for maintenance, such maintenance to be recoverable out of the house in suit. The Secretary of State applied to attach the house but it was held that the house was not attachable, the plaintiff having recovered a right to maintenance and not a house. It was then contended that a receiver could be appointed of the plaintiff's maintenance and the receiver could be directed to pay out of the sums received by him the amount due to Government. In dealing with that contention, Beaumont, C. J. observed as follows :

"Now u/s 60(1)(n), Civil P. C., a right to future maintenance is not liable to attachment or sale, and it would certainly seem that an order appointing a

receiver to collect future maintenance and pay the amount, or part of the amount, over to the judgment creditor is an order for attachment. Many payments, in addition to future maintenance, are exempted from attachment u/s 60, and such exemptions would appear to be based on considerations of public policy. If these exempted payments can be reached in execution by the appointment of a receiver by way of equitable execution, the protection afforded by the section is to a great extent lost."

He went on :

"So far as I know the Courts in England have always refused to sanction any form of equitable execution over property not liable to attachment at law. See *Lucas v. Harris* and *Crowe v. Price*."

* * * * * "But even if we have jurisdiction to appoint a receiver in this case, I think we ought not to do so, having regard to the small amount of maintenance which is only Rs. 8 per mensem."

15. This decision appears to be contrary to the decision of their Lordships of the Privy Council in AIR 1925 176 (Privy Council) . In that case, the decree-holder applied to attach and sell the interest of the judgment-debtor in 16 villages, derived under a deed of compromise in a suit. The deed provided that the judgment-debtor should hold and possess the villages "yielding a profit of Rs. 8,000 a year in lieu of maintenance." The application was dismissed by the Subordinate Judge on the ground that the judgment-debtor's interest was a right to future maintenance within the meaning of Section 60(1)(n), Civil P. C., and was not attachable. The High Court, on appeal, held that the interest of the judgment-debtor was not a right to future maintenance. They, however, held that the appropriate method of execution was by appointment of receiver; but they did not make the appointment. Their Lordships of the Privy Council did not agree with the High Court as to : "the actual legal position of the right of maintenance" and held that the Subordinate Judge had "correctly limited the issue between the parties to the maintenance question". It is abundantly clear from the judgment of the Privy Council that their Lordships agreed with the Subordinate Judge and disagreed with the High Court as to the correct legal position of the right to maintenance and they hold that the judgment-debtor's interest in the 16 villages was a "right to future maintenance" within the meaning of Section 60(1)(n) of the Code and that it was not therefore attachable and saleable. Having held that, they went on to observe as follows :

"The proper remedy lies, in a fitting case, in the appointment of a receiver for realising the rents and profits of the property, paying out of the same a sufficient and adequate sum for the maintenance of the judgment-debtor and his family, and applying the balance, if any, to the liquidation of the judgment creditor's debt."

It seems to me clear that their Lordships of the Privy Council were of opinion that the fact that attachment was not leviable by reason of the prohibition contained

in Section 60(1)(n) did not preclude the appointment of a receiver in execution for realisation of the rents and profits and paying there out a sufficient sum for the maintenance of the judgment-debtor and applying the balance for liquidation of the decretal debt.

6. Beaumont C. J., however, was of opinion that the Privy Council had agreed with the decision of the High Court that the interest of the judgment-debtor was not future maintenance and was not unattachable. With great respect to Beaumont C. J. I am unable to agree with that construction. The judgment of the Privy Council clearly stated that Section 60(1)(n) precluded an application for attachment. It is true that it was stated in two places in the judgment that their Lordships agreed with the conclusion of the High Court. But it seems to me that their Lordships only meant that they agreed with the High Court that the appropriate remedy was equitable or indirect execution and not that they agreed that the interest of the judgment-debtor could be attached.

7. Banerjee J. was of opinion that the judgment in AIR 1925 176 (Privy Council) was a clear authority for the proposition that in a fitting case recourse may be had to equitable execution, where direct execution by attachment and sale is precluded by statute. The Legislature has provided that provident fund money is immune from attachment under a decree or order. The word "attachment" has a well-known and well-defined meaning, and in my opinion its content should not be enlarged by speculations as to the object of the Act or the intention of the Legislature. Beaumont C. J. was of opinion that an order appointing a receiver to collect future maintenance and pay the amount or part of the amount over to the judgment-debtor is an order for attachment. But it seems to me that the Privy Council did not hold, in the case cited, that such was the effect of an order for appointment of receiver in execution. The fact that their Lordships thought that equitable execution was the proper remedy, though the judgment-debtor's properties were not attachable, lead me to that conclusion.

8. In *Secy. of State v. Venkata Lakshman* 49 Mad. 567 : (A.I.R. 1926 Mad. 565) Wallace and Madhavan Nair JJ., seem to have understood the decision of the Privy Council in the way I have indicated.

9. In *Ram Prasad Singh and Others Vs. Motiram Marwari and Another*, Meredith J. seems to have understood the judgment of the Privy Council as having disagreed with the expression of the opinion by the High Court that the interest of the judgment-debtor could be attached and sold. He observed:

"There is indeed a quotation in the judgment from that of the Subordinate Judge, which would suggest that the decree-holder had only asked for the appointment of a receiver, and the defence of the judgment-debtor proceeded on the lines that u/s 60, Civil P. C., a right of future maintenance could not be attached, and when you cannot attach you cannot appoint a receiver, a proposition not accepted. It is significant, I think, that in disagreeing with an expression of opinion by the High Court that the interest could be attached and sold their

Lordships said that they did not agree with the High Court on the subject of the actual legal position of the right of maintenance conferred upon the judgment-debtor."

10. The view we are taking was taken by Sen J. in *Baramdeo v. Mrs. Fay Smith*, 44 CWN 636 : 44 C. W. N. 636 and by McNair J., in *Baramdeo Pandey v. Fay Smith*, 44 CWN 637 .

11. Roxburgh J. has, however, in a case reported in *Dominion of India and Another Vs. Ashutosh Das and Others*, accepted the view of Beaumont C. J. and held that it was an improper use of the remedy by equitable execution to employ it to avoid a statutory bar.

12. The bar imposed by statute is, however, to attachment and not to any other form of execution. In the Privy Council case also there was a statutory bar to attachment and sale but their Lordships were of opinion that the bar did not apply to equitable execution.

13. It is true that there are cases in England where it was held that where by any particular statute a retiring pension is inalienable by a voluntary act of the person entitled to it, it cannot also be taken in execution. In *Lucas v. Harris* (1887) 18 Q. B. D. 127 : (56 L. J. Q. B. 15) Denman J. held that a creditor had the power to have a receiver appointed to a pension, in order that the moneys might be received by the receiver and dealt with by the Court according to justice. On appeal the order appointing a receiver was set aside. Lindley J. observed as follows:

"It appears to me, therefore, both on principle and on authority, that the pensions of these defendants being made inalienable by statute are not liable to be taken in execution either through an order for a receiver or in any other way."

14. It may be that the object of the Legislature in enacting Section 3, Provident Funds Act, was the protection of the provident fund money against any form of execution, whether by attachment or in any other way. Section 3, however, precludes only attachment of the provident fund money under a decree or order of a Court. In AIR 1925 176 (Privy Council) also there was prohibition against an attachment of the right to future maintenance by Section 60(1)(n), Civil P. C. The right to maintenance was also inalienable by a voluntary act, by reason of Section 6, T. P. Act. Still their Lordships of the Privy Council directed the appointment of a receiver in execution to collect the rents of the 16 villages and to pay there out a sufficient sum for the maintenance of the judgment-debtor and to liquidate the decree which had been put into execution. I am afraid, we will be flying in the teeth of this authority, which is binding on us, if we were to hold that a receiver in execution could not be appointed in this case, having regard to the supposed object of the Legislature.

15. In my view, the decision of the Privy Council is an authority for the proposition that where a statute expressly prohibits attachment, equitable

execution is permissible, in a suitable case. The Court has, however, a discretion. The terms on which the receiver will be appointed depend on the facts of each case.

16. In my opinion, the decision of the learned Judge is right and should be upheld. In my opinion the appeal should be dismissed with costs.

Harries C.J.

17. I entirely agree, but as we are differing from a decision of a learned Judge of this Court and from a Bench decision of the Bombay High Court I desire to add a few words.

18. In my view, this case is covered by the decision of their Lordships of the Privy Council in AIR 1925 176 (Privy Council) . The head-note of the case reads :

"The respondent having obtained a money decree against the appellant applied to attach and sell 16 villages in execution. The appellant held the villages under the terms of a deed of compromise, which provided that he was to hold and possess the villages, "yielding a profit of Rs. 8000 a year, in lieu of his maintenance, without power of transfer, during the lifetime of his brother, to whom he was to pay Rs. 7870 a year in respect of the Government revenue, cesses and malikana."

Their Lordships held that the appellant's interest in the villages was "a right to future maintenance" within Section 60, Sub-section (1) (n), Civil P. C., 1908, and therefore could not be attached and sold; but that a receiver should be appointed to realise the rents and profits, with direction to pay there out a sufficient and adequate sum for the maintenance of the appellant and his family, and to apply the balance (if any) to the liquidation of the decree.

18. If the head-note correctly sets out the effect of this case there can be no doubt that their Lordships of the Privy Council held that a receiver could be appointed in a case where Section 60(1)(n), Civil P. C., expressly prohibited attachment.

19. This decision of their Lordships of the Privy Council was considered by a Bench of the Bombay High Court in the case of Secretary of State v. Bai Somi 57 Bom. 507 : (A. I. R. 1933 Bom. 350). The Bench was of opinion that the decision of their Lordships of the Privy Council to which I have referred did not hold that a receiver could be appointed in a case where attachment was expressly prohibited by the Code. Sir John Beaumont C. J., who delivered the main judgment in this case doubted whether the head-note in AIR 1925 176 (Privy Council) was justified by the decision of the Board and that it was a moot point in that case whether the property sought to be attached in execution of the decree was future maintenance or not.

20. In AIR 1925 176 (Privy Council) the Subordinate Judge had held that what was sought to be attached was the right to future maintenance. The High Court

took a different view and held that the interest of the appellant in the villages which were sought to be attached was not covered by the expression "right to future maintenance" which the High Court thought contemplated a bare right of maintenance and nothing more. Lord Shaw delivered the judgment of the Board and the judgment opens with these words :

"The Board is of opinion that the conclusion reached by the High Court by their judgment of 2-5-1921, was correct. It is to be regretted that the High Court did not itself, in the exercise of its powers, appoint a receiver of this property which the judgment creditor seeks to attach and bring to sale."

21. Sir John Beaumont C. J., in the Bombay

case expressed the view that their Lordships of the Privy Council in this opening statement in Lord Shaw's judgment approved of the view of the High Court that what was attached in the case was not a right to future maintenance.

22. What their Lordships of the Privy Council approved of was the conclusion of the High Court and the conclusion of the High Court was that a receiver could be appointed. It is significant that immediately after approving of the conclusion of the High Court their Lordships expressed regret that the High Court did not proceed to appoint a receiver having held that a receiver could be appointed. Apparently, for some reason the High Court had not appointed a receiver though they had held that in the circumstances a receiver could be appointed.

23. In the following three paragraphs of their judgment, Lord Shaw deals with the conflicting views of the Subordinate Judge and the High Court as to the nature of the interest, sought to be attached. The judgment, in my view, makes it abundantly clear that their Lordships of the Privy Council approved of the view of the Subordinate Judge and did not accept the view of the High Court. Their Lordships, in my judgment, clearly held that what was sought to be attached was a right to future maintenance and that the attachment of such a right was forbidden by Section 60(1)(n), Civil P. C. Though their Lordships arrived at this conclusion nevertheless they held that it was a case in which a receiver could be appointed. The High Court in their judgment had observed :

"The appropriate remedy is what is known as equitable execution or indirect execution, namely, by the appointment of a receiver who takes the place of the debtor and acts as an officer subject to the directions of the Execution Court in collecting and disbursing the debtor's income in accordance with the directions of the Execution Court towards the discharge of the claim of the decree-holder."

These views appeared to the Board to be sound. With great respect to the learned Judges of the Bombay High Court, I must differ from their view of the decision in AIR 1925 176 (Privy Council) . It appears to me that that case is a clear authority for the proposition that a receiver may be appointed in execution of a decree in cases where attachment in execution of the decree has been expressly prohibited by statute.

24. Roxburgh J. in the very recent case of Dominion of India and Another Vs. Ashutosh Das and Others, accepted the view of the Bombay High Court, but in my judgment this decision of Roxburgh J. cannot be regarded as correct and must be overruled. At p. 255 the learned Judge observed :

"Manifestly, it was most unjust and improper in the circumstances, in my opinion, to appoint a receiver for that purpose. The appointment of a receiver in execution proceedings has been described as a form of equitable relief which is granted on the ground that there is no effective remedy by execution at law. Surely, it is an improper use of that equitable remedy to employ it to avoid a very definite bar created by statute law to achieving the very object for which the receiver is appointed."

25. If there is any force in this observation of Roxburgh J. then it appears to me that their Lordships of the Privy Council made an improper use of the equitable remedy because they allowed it even where there was a definite bar created by statute law which made attachment impossible. In my view, the Bench decision of the Bombay High Court and the case of Dominion of India and Another Vs. Ashutosh Das and Others, cannot be reconciled with AIR 1925 176 (Privy Council) and cannot, in my view, be regarded as good law. The view taken by McNair and Sen JJ. in the cases referred to by my learned brother is, in my judgment, the correct view and I agree that this appeal should be dismissed with costs as stated by my learned brother.