
(1943) 01 BOM CK 0005

In the Bombay High Court

Case No : Civil Revision Application No. 268 of 1941

Usman Abubakar Sani

APPELLANT

Vs

The Chief Accounts Officer, G.I.P. Railway

RESPONDENT

Date of Decision : 29-01-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 61(1)(g)
Transfer of Property Act, 1882 — Section 123

Citation : AIR 1943 Bom 453 : (1943) 45 BOMLR 816

Hon'ble Judges : Lokur, J

Bench : Single Bench

Judgement

Lokur, J.—This application arises out of proceedings in execution of the decree in suit No. 270 of 1936 obtained by the petitioner against one S.D. Cornelius, an employee of the G.I.P. Railway Company, for the recovery of Rs. 2,600 with future interest and costs by monthly instalments of Rs. 40.

2. The judgment-debtor Cornelius died on April 20, 1940, and this darkhast was presented by the petitioner against his widow and legal representative, Mrs. Cornelius, for the recovery of Rs. 2,240 3/4 by the attachment of Rs. 315 as the arrears of the salary of Mr. Cornelius and Rs. 3,240 in the hands of the Railway Company as the moneys due to him. When a prohibitory order was served on the company, an objection was raised regarding the alleged amount of allowance on the ground that it was really a gratuity payable in the discretion of the Agent of the company by way of a gift and was therefore not liable to attachment, The executing Court made an inquiry into this objection, presumably under Order XXI, Rule 58, of the Civil Procedure Code, 1908, and held that the amount of gratuity credited in the account of the deceased judgment-debtor Cornelius on May 10, 1940, was not liable to attachment u/s 60, Sub-section (1)(g), of the Civil Procedure Code. The prohibitory order was, therefore, withdrawn and the darkhast was dismissed.

3. The petitioner made an application to this Court for a revision of that order,

and Wassoodew J, remanded the case for findings on the following five issues :-

1. Whether the amount sought to be attached was credited to the employee, judgment-debtor, as part of his wages or allowances ? If not,
2. Whether it is gratuity or "special contribution" in terms of the special rules of the Railway company ? If so,
3. Whether such fund was or could not be regarded as part of the judgment-debtor's estate ?
4. Whether, and, if so, when, the fund now claimed by the petitioner was paid to the account of the deceased judgment-debtor or his widow by the Railway company under its orders ?
5. Whether the amounts claimed are exempt from attachment u/s 60 of the CPC or any other rules ?

4. Findings have now been returned on those issues against the petitioner.

5. After this petition was filed in this Court, Mrs. Cornelius died on May 8, 1941, and her name was struck off at the instance of the petitioner. Her legal representative has not been brought on record. A preliminary objection was raised that this petition cannot be heard in the absence of the legal representative of the judgment-debtor in whose interest the company has raised its objection to the attachment of the amount of the gratuity claimed by the petitioner as due to him. The Railway Company further urges that as Mrs. Cornelius died without leaving any dependant of her husband, no gratuity is any longer payable and therefore the company holds no debt of the judgment-debtor which can be attached in execution of the decree against him. Although this objection was raised by an application made to the executing Court, it was not considered on its merits, but as mere findings have been called for by this Court, the question was left to be decided, here. Whether the gratuity has lapsed or whether it goes to the Crown by escheat will have to be determined in the light of the rules of the company. But in the absence of any evidence to show whether Mrs. Cornelius has left anyone who can be regarded as a dependant of her deceased husband, it is useless to determine the question on its merits. But as I agree with the view taken by the lower Court that there is no attachable debt in the hands of the Railway Company, it is not necessary to go further into the question as to whether the debt, if any, lapsed on the death of Mrs. Cornelius.

6. The amount of gratuity has been admittedly credited to the account of the deceased on May 10, 1940. The orders governing the grant of gratuities to subordinate staff of the G.I.P. Railway Company are contained in exhibit 37, and Rule 1 provides that the Agent may grant at his discretion as a reward for good, efficient, faithful and continuous service, gratuities on retirement to subordinate railway employees or to their widows and children dependent on them. That rule adds that it must be distinctly understood that the grant of the gratuities cannot be claimed as a right.

7. In *Natha Gulab and Co. Vs. G.I.P. Railway Company*, such a gratuity is held to be in the nature of a gift and it is to be given at the discretion of the Agent and cannot be claimed by the employee as of right. This is made clear in the note below Rule 7 at p. 7 of exhibit 37, where the payment of the gratuity is expressly stated to be a purely voluntary act and in fact a gift. It follows from this that in order to constitute a valid binding gift there must be either delivery or a registered instrument duly signed, as required by paragraph 2 of Section 123 of the Transfer of Property Act. The note referred to above further makes it clear that a mere contemplated gift of the gratuity does not amount to completed gift and the actual sanction of the gratuity, even if communicated to the employee, amounts to no more than a promise to pay. Even after the Agent decides to pay the gratuity, the company does not ipso facto become a trustee for the employee in respect of that amount. It was so held in the case of *Natha Gulab & Co. v. Shaller and G.I.P. Railway Co.* cited above. There on the defendant's retirement from the service of the company a retiring gratuity of Rs. 7,700 was sanctioned. The defendant wanted the payment to be made to him in London and the company sent the amount to their bankers in Bombay for being forwarded to the secretary of the company in London. Before, however, the money could be remitted, the plaintiff, who held a money decree against the defendant, served a warrant of attachment on the company, and it was held that the amount could not be attached since there was no completed gift of the amount to the defendant. But a distinction is sought to be made in the present case on the ground that the amount was actually credited to the account of the deceased judgment-debtor. In fact it was credited to the account of the Provident Fund of Mr. Cornelius. It is argued that this amounted to a completion of the gift by delivery of the amount, and reliance is placed on *Bai Mahakore v. Bai Mangla* ILR (1911) 35 Bom. 403 and *Kanakasabapathy v. Hajee Oosmm* AIR [1925] Mad. 192. In the former case there was a credit entry made by one Damodardas in his account books in the name of his wife Harkore, and Chandavarkar J. held that this constituted a valid trust in favour of Harkore, and Heaton J. held that Damodardas had become a depositor and the amount had become a deposit with him. In the latter case a bonus of Rs. 3,500 out of the profits of the firm was credited to the employee in consideration of his good services and he was allowed to withdraw some money out of that deposit. In both the cases it was held that the property in the amounts thus deposited had passed to the persons to whose accounts they were credited. But in this case the amount was not credited to any living person. There can be no delivery of moveable property to one who is dead. It is true that the credit of the amount in the Provident Fund Account of deceased Mr. Cornelius indicated that the Agent had made up his mind to pay the amount as gratuity to the person entitled. It cannot be said that Mrs. Cornelius was the person so entitled, because under the rules it was to be paid either to his widow or to his dependant children, and failing them to his adopted dependant children, if any. The company had to find out whether there was any such person entitled to the gratuity after the death of the deceased employee, and till then the amount contemplated to be thus given was credited

for the sake of convenience to the account of the Provident Fund of the deceased. It does not mean that thereby the amount became a part of the Provident Fund or that the title to it passed either to the widow or to any other dependant of the deceased. Perhaps the case would have been different if the amount had been credited to the account of the widow of the deceased employee. In that case it might be said that she could be treated as a depositor and the company as a depositor, or, as Chandavarkar, J. held, the company might be treated as a trustee for her. The amount was not payable to the estate of the deceased employee. If the deceased employee had not left a widow or any dependant child or adopted child, the mere fact that the amount was credited to the estate does not entitle any other heir of the deceased to claim it.

8. In *Janki Dm v. East Indian Railway Company* ILR (1684) All. 634 a servant in the employment of the East Indian Railway Company had been recommended by the Traffic Manager a bonus in consideration of his long and good services. This recommendation was sanctioned, and the amount of the bonus was received by the District Paymaster. But before the payment could be made, the money was attached in execution of a decree, and it was held that the money was not liable to attachment inasmuch as the bestowal of the money was a gift of moveable property and that as it was not evidenced by a registered instrument, it could only be effected by actual delivery, which had not been made in that case. Similarly here also the account still remained in the hands of the company and was not credited to the amount of the person who was entitled to receive it. I, therefore, hold that the mere fact that it was credited to the account of the deceased employee does not amount to a delivery as contemplated by Section 123 of the Transfer of Property Act. The amount in the hands of the company was, therefore, not liable to attachment. In this view it is not necessary to consider whether, after the death of the judgment-debtor's widow, her legal representative is entitled to claim it from the company.

9. Rule and interim attachment discharged with costs.