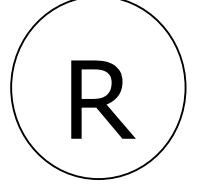




CNR: KAHC010394572021

NC: 2026:KHC:37925
W.P. No.19310/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 23RD DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.19310/2021 (GM-CPC)



BETWEEN:

SHAHEENA
W/O LATE BABU
AGED ABOUT 53 YEARS
R/O NO.42-A, RAILWAY QUARTERS
MOOPA COMPOUND, CHAMEGOWDA AREA
OLD TOWN, BHADRAVATHI 577301
SHIVAMOGGA DISTRICT.

...PETITIONER

(BY MR. GURU PRASAD, ADV., FOR
MR. S.V. PRAKASH, ADV.,)

AND:

1. L.A. PARAMESHWARA
S/O ARJUN
AGED ABOUT 47 YEARS
R/O CHAMEGOWDA AREA
OLD TOWN, BHADRAVATHI 577301
SHIVAMOGGA DISTRICT.
2. AHMED
S/O LATE BABU
AGED ABOUT 32 YEARS
R/O NO.42-A, RAILWAY QUARTERS
MOOKA COMPOUND, CHAMEGOWDA AREA
OLD TOWN, BHADRAVATHI 577301
SHIVAMOGGA DISTRICT.

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA





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3. ASIF BASHA
S/O LATE BABU
AGED ABOUT 27 YEARS
R/O NO.42-A, RAILWAY QUARTERS
MOOKA COMPOUND, CHAMEGOWDA AREA
OLD TOWN, BHADRAVATHI 577301
SHIVAMOGGA DISTRICT.

...RESPONDENTS

(BY MS. SHARANYA K, ADV., FOR
MR. S. KALYAN BASAVARAJ, ADV., FOR R1
NOTICE STANDS WAIVED IN RESPECT OF R2 & R3
V/O/DTD:08.11.2021)

- - -

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 03.06.2021 PASSED BY THE COURT OF LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, BHADRAVATHI IN EX.CASE NO.70/2019 PRODUCED AS PER ANNEXURE-C TO THE WRIT PETITION AND THEREBY CONSIDER THE OBJECTIONS MADE BY THE PETITIONER IN EX.CASE NO.70/2019 & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 17.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 03.06.2021 passed in Ex.Case No.70/2019 by the Principal Civil Judge and JMFC, Bhadravathi (for short, 'the Executing Court').



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2. Sri.Guru Prasad, learned counsel appearing for Sri.S.V.Prakash, learned counsel for the petitioner submits that the respondent No.1-decree holder has filed an execution petition seeking to execute the decree in O.S.No.109/2016 against the father of the respondent Nos.2 and 3 and seeking to attach the death benefits of late Babu. The Executing Court, without considering the objections of the judgment debtors, passed an order of attachment of gratuity amount and ordered to release Rs.3,00,000/- which is impermissible. In support of his contentions, he placed reliance on the decision of this Court in the case of **SRI G.NARAYANA RAO Vs. V.R.NAGMANI AND ANOTHER¹** and seeks to allow the petition.

3. *Per contra*, Kum.Sharanya K., learned counsel appearing on behalf of Sri.S.Kalyan Basavaraj, learned counsel for the respondent No.1 supports the impugned

¹ ILR 1996 KAR 3246



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order of the Executing Court and submits that the property of deceased Babu became an estate of the family and the judgment debtors are liable to pay the decretal amount and attachment of the amount by the Executing Court is permissible as the attachment is not the gratuity amount of the employee but it is an estate after his death. In support of her contentions, she placed reliance on the decision of the Delhi High Court in the case of **BUREAU OF OUTREACH AND COMMUNICATIONS AND DD M/O INFORMATION OF BROADCASTING Vs. CANARA BANK²** and the decision of the Madras High Court of Madurai Bench in the case of **MURUGAIAH VELAR Vs. VELAMMAL AND OTHERS³** and seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, the learned counsel for

² 2025 SCC Online Delhi 3502

³ 2017 SCC Online Mad 2821



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respondent No.1 and meticulously perused the material available on record.

5. The point that arises for consideration in this petition is:

"Whether the gratuity amount of the deceased employee can be attached in the execution proceedings?"

6. The respondent No.1 filed a suit in O.S.No.109/2016 against the deceased Babu for recovery of amount. The said suit came to be decreed on 06.04.2018 and thereafter, the respondent No.1-decree holder filed Ex.Case No.70/2019 against the petitioner, respondent Nos.2 and 3 seeking to execute the judgment and decree in O.S.No.109/2016. In the said execution proceedings, the respondent No.1-decree holder sought attachment and sale of movables of the judgment debtors, arrest of the judgment debtors and attachment of death fund and other benefits of the judgment debtors. The



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petitioner-judgment debtor No.1 filed objections opposing the execution petition. The Executing Court, under the impugned order, considering the rival submissions, ordered attachment of gratuity amount of the deceased Babu and further ordered that the decree holder is entitled to release of Rs.3,00,000/-, by overruling the objection of the petitioner.

7. To appreciate the point as to whether the gratuity amount can be attached, it would be useful to extract Sections 4(1) and 13 of the Payment of Gratuity Act, 1972 (for short, 'the Act') which is extracted hereinbelow:

"4(1) *Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*

- (a) on his superannuation, or*
- (b) on his retirement or resignation,*
- (c) on his death or disablement due to accident or disease:*

Provided that the completion of continuous service of five years shall not be necessary where the



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termination of the employment of any employee is due to death or disablement:

[Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

13. Protection of gratuity.- *No gratuity payable under this Act [and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.]*

8. Section 4 of the Act provides for payment of gratuity. The gratuity shall be payable to an employee on



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termination of his employment, on his superannuation, on his retirement or resignation or on his death or disablement due to accident or disease. Section 13 of the Act makes it clear that no gratuity payable under the Act shall be liable to be attached in the execution of the decree or order of any civil, revenue or criminal Courts.

9. The Andhra Pradesh High Court in the case of **D.VIMALA Vs. CANARA BANK, METTUGUDA, SECUNDERABAD⁴**, at paragraphs 5 and 6 held as under:

"5. In the decision of the Supreme Court reported in Union of India v. J. C. Fund & Finance , it was observed by their Lordships that the Provident Fund amount, pensions and other compulsory deposits which are payable to an employee will retain their character until they reach the hands of such employee even if he has already retired from service. The earlier decisions of the Supreme Court reported in Union of India v. Radhah Kissen was also referred to by their Lordships in the above cited decision reported in Union of India v. J. C. Fund & Finance (supra) and it was observed that so long as

⁴ 1997 (6) ALT 62



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the amount of provident fund dues, the nature of such dues is not altered till they are actually paid to the Government servant who is entitled to it on retirement or otherwise; that the Government is a trustee for such amounts due to the Government employee even after his retirement. The learned Counsel for the revision petitioner has also tried to rely upon another decision of the Supreme Court reported in Calcutta Dock Labour Board v. Sandhya Mitra 1985 I CLR 229 in which the question that arose for consideration is whether the gratuity amount due to an employee is liable for attachment. After referring to the relevant provisions of the Payment of Gratuity Act, 1972 and also the provisions of Section 60(1) (proviso) (g), C.P.C., it is observed by their Lordships that Section 13 of the Payment of Gratuity Act gives total immunity to gratuity from attachment. In the case concerned in that decision, the gratuity amount was payable to workman employee under the Calcutta Dock Labour Board and such amount was sought to be attached in the execution proceedings taken against the widow and son of the deceased employee after his death for rearranging the amount due under a decree passed against the employee. It is, therefore, clear from the observations made by their Lordships in the above cited decision of the Supreme Court that even in a



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case where the attachment of the gratuity amount is sought in the execution proceedings launched against the legal representatives of the deceased employee to whom the gratuity amount was payable, such gratuity amount is not liable for attachment. As already stated above, these decisions of the Supreme Court were evidently not brought to the notice of the Kerala High Court when the matter was argued in the above said matter relating to the decision reported in Satyavathy v. Bhargavi (supra).

6. Apart from this, it is to be seen that Section 4(1) of the Payment of Gratuity Act provides that gratuity shall be payable to an employee (a) on his superannuation or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease. It is clear from such provisions that gratuity shall be payable to an employee directly on his superannuation or on his retirement or resignation under Clauses (a) or (b) of Section 4(1) and to his legal representatives in case of his death as per Clause (c) of Section 4(1) of the Payment of Gratuity Act. The second proviso to Section 4(1) provides that in case of the death of the employee, gratuity payable to him shall be paid to his nominee or if no nomination has been made, to his heirs. Section 13 of the Payment of Gratuity Act



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provides that no gratuity payable in this Act shall be liable to attachment in execution of any decree or order of any Court. In the present case, the gratuity amount lying with the Deputy Controller of Stores, South Central Railway, Secunderabad is payable under the Payment of Gratuity Act to the deceased-second Judgment - Debtor during his life time and it became payable to his wife and other legal representatives after his death in view of the provisions of Section 4(1) of the Payment of Gratuity Act which are already referred to above. Inasmuch as the said gratuity amount is payable under the Payment of Gratuity Act to the legal representatives of the deceased-Judgment-Debtor No. 2 after his death, such amount will not lose its character as such gratuity amount is totally exempt from attachment in view of the protection granted under Section 13 of the Payment of Gratuity Act. Therefore, in view of such circumstances, the gratuity amount which became payable to the present revision petitioner and the other legal representatives of the deceased-Judgment-Debtor No. 2 after his death and which was sought to be attached in the present case is not liable for attachment in view of the provisions of Section 60(1) (proviso) (g), C.P.C. and also Section 4r/w. Section 13 of the Payment of Gratuity Act and the impugned



orders of the lower Court cannot, therefore, be sustained."

10. This Court in the case of **G.NARAYANA RAO** referred *supra* at paragraph 7 held as under:

"7. It is therefore dear that by virtue of Section 13 of the Act, the Gratuity amount payable to an employee of an Industrial Concern, is exempt from attachment in execution of any decree or order of any Civil Court or Criminal Court. Section 14 thereof further envisages that the provisions of the payment of Gratuity Act, 1972 shall have overriding effect on the provisions of any other enactment. In that view of the legal position I find that the impugned order of the Court below is not sustainable and it is liable to be set aside."

11. The Delhi High Court in the case of **BUREAU OF OUTREACH AND COMMUNICATIONS AND DD M/O INFORMATION OF BROADCASTING** referred *supra*, at paragraph 18 referring to the decision of the Madras High Court in the case of **MURUGAIAH VELAR**, held as under:



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"18. *A similar issue arose before the learned Single Judge of High Court of Madras in Murugaiah Velar v. Velammal, 2017 SCC OnLine Mad 2821. The relevant para of the judgment reads thus:—*

"6. *No doubt, as per the Code of Civil Procedure, the gratuity amount allowed to the pensioners is exempted from attachment. However, insofar as this case is concerned, the respondents 1 to 3/defendants are claiming right over the gratuity amount only in their capacity as the legal representatives of the deceased borrower. In such circumstances, it is found that when the exemption provided to the gratuity amount would be made applicable only to the deceased borrower and the said exemption cannot be claimed by his legal representatives as they inherit the gratuity amount in their capacity as the legal representatives of the deceased and in such circumstances, the estate of the deceased lying in the hands of the legal representatives are liable for action pursuant to the decree passed in the suit and in such view of the matter, it is found that the respondents 1 to 3/defendants cannot claim the benefit of the provision of Section 60(g) of the Code of Civil Procedure as they cannot be equated as pensioners entitled to receive the gratuity amount as such. When it is found that they would be entitled to get the gratuity amount only in their capacity as the legal representatives of the deceased borrower and so seen it is found that the same would constitute only the estate of the deceased in their hands and the position being above, it is found that the respondents 1 to 3/defendants cannot seek the benefit of the exemption provided to the deceased borrower under Section 60(g) CPC*

7. *Be that as it may, a perusal of Section 60(g) CPC, would go to show that the gratuity amount allowed to the pensioners alone is exempted from attachment and once the gratuity amount is lying in the hands of the legal*



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representatives of the pensioners, it would come under the classification of the estate in the hands of the legal representatives and therefore, the legal representatives cannot seek the benefit of the above said provision of law and therefore, it is found that the Lower Court had erred in raising the attachment passed in I.A. No. 443 of 2001. The learned counsel for the respondents 1 to 3/defendants, in support of his contentions, placed reliance upon the decision in (2001) 6 SCC 591 [Corakhpur University v. Dr. Shitla Prasad Nagendra]. However, as rightly putforth by the learned counsel for the revision petitioner, the said decision is found to be not applicable to the facts and circumstances of the case at hand."

12. The Hon'ble Supreme Court in the case of ***CALCUTTA DOC LABOUR BOARD AND ANOTHER Vs. SMT.SANDHYA MITRA AND OTHERS***⁵ has held at paragraphs 3, 4, 5 and 6 as under:

"3. Mr Mukherjee appearing for the appellants maintained that the view taken both by the Chief Judge of the Small Cause Court as also the Division Bench of the High Court is contrary to law and, therefore, cannot be sustained.

4. Section 1(3) of the Payment of Gratuity Act (39 of 1972) ("Act" for short), provides that the Act shall extend to ports. "Port" has been defined in Section 2(n) of the Act. There can be no dispute that the Calcutta

⁵ AIR 1985 SC 996



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Port is covered by the Indian Ports Act, 1908. It is true that under one of the three schemes framed by the Calcutta Dock Labour Board gratuity was payable to Md. Safiur Rehman, but such gratuity must be taken to be covered by Section 4 of the Act, in the absence of any notification contemplated under Section 5. Section 5 authorises the appropriate Government by notification and subject to such conditions as may be specified in that notification to exempt, inter alia, any port to which the Act applies, from the operation of the provisions of the Act, if in the opinion of the appropriate Government the employees in the port are in receipt of gratuity or pensionary benefit not less favourable than the benefits conferred under the Act. Neither the Chief Judge nor the High Court has found that there has been a notification as contemplated under Section 5 of the Act in this case. It had also not been contended at any stage by the respondents that such a notification had been made.

5. *Reference may now be made to Sections 13 and 14 of the Act which are very relevant.*

"13. Protection of gratuity.—No gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

14. Act to override other enactments, etc.— The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this



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Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

6. We may point out that by Central Act No. 25 of 1984 Section 13 has been amended with effect from July 1, 1984 and the amended section reads thus:

"No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue, or criminal court."

In the absence of any notification within the meaning of Section 5 of the Act the amendment is not relevant for consideration. Section 14 has overriding effect and Section 13 gives total immunity to gratuity from attachment. The preamble of the Act clearly indicates the legislative intention that the Act sought to provide a scheme for payment of gratuity to all employees engaged in, inter alia, ports and under this Act gratuity was payable to workers like Md. Safiur Rehman. The gratuity which was payable to him squarely came within the purview of the Act and, therefore, became entitled to immunity under Section 13 thereof."

13. The mandate of Section 13 of the Act is very clear that gratuity payable to an employee either on his superannuation, on his retirement or resignation or on his



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death or disablement due to accident or disease, shall not be liable to be attached in the execution of any decree or order of any Civil Court, revenue or Criminal Court. The Hon'ble Supreme Court, in the aforesaid decision, at paragraph 6 referring to the preamble of the Act, held that the legislative intent of the Act was to provide a scheme for payment of gratuity to all the employees engaged in different organisations referred in the Act.

14. **Section 60** of the Code of Civil Procedure, 1908, is extracted hereinbelow:

"60. Property liable to attachment and sale in execution of decree.—(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:



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

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to 1 [an agriculturist or a labourer of a domestic servant] and occupied by him;

(d) books of account ;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to pensioners of the Government 2 [or of a local authority or of any other employer], or payable out of any service family pension fund 3 notified in the Official Gazette by 4 [the Central Government or the State Government] in this behalf, and political pensions; 5

*[(h) the wages of labourers and domestic servants, whether payable in money or in kind; 6 ***]*

[(i) salary to the extent of 8 [the first 9 [10[one thousand rupees]] and two third of the remainder]



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11[*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-four 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.]

[(ia) one-third of the salary in execution of any decree for maintenance;]

[(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;]

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 14[1925], (19 of 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 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(kc) the interest of a lessee of a residential of building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;]



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[(1) any allowance forming part of the emoluments of any 2 [servant of the 3 [Government]] or of any servant of a railway company or local authority which the 4 [appropriate Government] may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to 5 [any such servant] while under suspension;]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by 6 [any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

[(pp) where the judgement-debtor is a servant of the state Government who has insured his life under the rules in force relating to the official Branch of Karnataka Government Life Insurance Department :-

(1) In the case of insurance effected prior to the ninth day of May,1911, the whole of the bonus payable or paid thereunder to such servant, or in the event of his death to his nominee or other person or persons entitled to such bonus under the said rules, and

(2) In the case of insurance effected on or after the ninth day of May,1911 and such insurance is compulsory, then the bonus in respect of the compulsory premia payable or paid to such servant, or in the event of his death to his nominee or other



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person or persons entitled to such bonus under the said rules.]

[Explanation I. —The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.]

[Explanation II. —In clauses (i) and (ia)], "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.]

[Explanation [III]—In clause (1) "appropriate Government" means— (i) as respects any 12[person] in the service of the Central Government, or any servant of 13[a Railway Administration] or of a cantonment authority or of the port authority of a major port, the Central Government; 14 * * * * (iii) as respects any other 2 [servant of the 3 [Government]] or a servant of any other 15*** local authority, the State Government.]*

[Explanation IV—For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled unskilled or semi-skilled labourer.

Explanation V—For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI—For the purposes of Explanation V an agriculturist shall be deemed to cultivate land personally, if he cultivates land—



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*(a) by his own labour, or
(b) by the labour of any member of his family, or
(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.]*

[(IA) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.]

*(2) Nothing in this section shall be deemed 1 *** to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land 2".*

[emphasis supplied]

15. The aforesaid Section indicates that the property is liable for attachment and sale in a execution decree and it carves an exception in the said Section that the following properties shall not be liable to be attached or sold:

(a) to (f) xxxx,

(g) stipends and gratuities allowed to pensioners of the Government 2 [or of a local authority or of any other employer], or payable out of any service family



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pension fund 3 notified in the Official Gazette by 4
[the Central Government or the State Government]
in this behalf, and political pensions.

(h) to (p) xxxx

16. The aforesaid provision of law makes it clear that the gratuity of a Government servant cannot be attached. It is required to be noticed that the Madras High Court in the case of **MURUGAIAH VELAR** referred *supra*, at paragraph 7 observed that the gratuity amount allowed to the pensioner alone is exempted from the attachment and once the gratuity amount is lying in the hands of the legal representative of the pensioner, it would come under the classification of the estate under the hands of the legal representatives and therefore, the legal representatives cannot seek the benefit of the above said provision of law. In the case on hand, the decree holder has sought to attach the gratuity amount of the deceased Babu who was an employee and the said amount is with the employer.



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Hence, there cannot be any attachment of the gratuity amount. In my considered view, merely because the legal representatives of the employee are entitled to receive the gratuity amount of the deceased employee, it would not become the estate of the family. It is also required to be noticed that if the gratuity amount payable to the deceased employee is paid by his employer, either to the employee in the cases where the employee has retired on attaining superannuation or on his resignation or to the legal heirs of the deceased employee on the death of the employee cannot be attached as there is a clear bar under Section 13 of the Act as well as under proviso (g) to Section 60(1) of the CPC. It would be appropriate to observe that if the gratuity amount "payable" to the employee as referred under Section 4 of the Act, cannot be attached, however, if the gratuity amount is withdrawn by the legal representatives of the deceased employee, then the said amount would become the estate of the deceased but not otherwise. It is further to be noticed



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that Section 13 of the Act provides total immunity to the gratuity amount from attachment.

17. For the preceding analysis, I am of the view that the Executing Court has committed a grave error in ordering the attachment of gratuity amount of the deceased Babu. Accordingly, the point is answered in affirmative. Hence, I proceed to pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 03.06.2021 passed in
Ex. Case No.70/2019 by the Principal Civil Judge
& JMFC, Bhadravathi, is set aside.

No order as to costs.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

RV
List No.: 1 Sl No.: 2