

*** THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

+ CIVIL REVISION PETITION No.3532 OF 2015

%21.09.2015

Between:

Balavenkatagari Rama Muni Reddy, aged 53 yrs,
S/o.Venkata Subba Reddy, R/o.Gandluru Village,
Kondapuram Mandal,
Y.S.R.Kadapa District.
Petitioners.

...

AND

K.Fakruddin

..... Respondents.

! Counsel for Petitioners : Sri M.N.Narasimha Reddy

^ Counsel for Respondents : ...

< Gist:

> Head Note:

? Cases referred:

1. AIR 2009 SC 930
2. (1976) 3 SCC 607
3. (1969) 1 SCC 225
4. (2001) 6 SCC 591
5. (1987) 1 SCC 551

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.3532 of 2015

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ORDER :

The petitioner is the decree holder of money suit O.S.No.111 of 2013 on the file of Junior Civil Judge, Jammalamadugu filed against the respondent-judgment debtor, who is a retired railway Gangman, Railway Kondapuram Village and Mandal and the petitioner filed EP No.1 of 2014 to recover the decretal debt and for attachment under Order 21 Rule 52 of C.P.C. and also to recover the amount lying with Andhra Bank, Gooty Branch in the account of the judgment debtor supra.

The respondent - judgment debtor opposed the prayer for attachment with counter contest as can be seen from paragraph No.3 of the order of the lower court in saying 'no amount lying in Bank account apart from he is retired employee eking out livelihood by getting meager pension and has no means to discharge E.P. amount and the other contention is plea for discharge of E.P. amount in seeking to dismiss the execution petition. The decree holder himself examined as PW.1 and on behalf of the judgment debtor RW.1 – railway employee working in the cadre of Office Superintendent, RW.2 – Manager, Andhra Bank, Gooty besides the judgment debtor-RW3 were examined. He placed reliance Exs.X1 to X.4 documents which are details of payments of service benefits particulars and Statement of account of judgment debtor. It is from the said evidence on record that after hearing the learned Junior Civil Judge by order dated 09.07.2015 dismissed the application of the decree holder saying the amount lying in the bank account sought for attachment comprising of retirement benefits of judgment debtor including provident fund, gratuity and commutation which are exempted under Section 60 (g) and (k) of C.P.C. and thereby

cannot be attached much less to withhold and sent for. For that conclusion, the learned Junior Civil Judge placed reliance on the expression of the Apex Court in ***Radhey Shyam Gupta Vs. Punjab National Bank and another***^[1], particularly from paragraph 33, which reads as follows:

“...33.However, we are also of the view that having regard to proviso (g) to Section 60 (1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in Jyoti Chit Fund case had been considerably watered down by later decisions which have been indicated in para 22 herein before and it has been held that gratuity payable would not be liable to attachment for satisfaction of a Court decree in view of proviso (g) to Section 60 (1) of the Code”.

In paragraph No.35 the Apex Court observed as follows:

“35. We also agree with Ms. Shobha that even after the retrial benefits, such as pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by proviso (g) to Section 60 (1) of the Code. Except for the decision in Jyoti Chit Fund and Finance case, where a contrary view was taken, the consistent view taken thereafter supports the contention that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retrial benefits paid to the appellant.”

Now the said order is impugned by the decree holder by the present revision petition with contentions on the ground that judgment debtor reached super annuation two years back and still

he cannot proclaim to get any protection under Section 60 (g) and (k) of C.P.C., as the funds are merged in the common pool in the bank account and lost the identity and cannot be said therefrom any amount as gratuity or the pension or alike and the explanation 1 to Section 60 made clear of money payable in relation to matters mentioned in Clauses g, h, i, i(A), j and o are exempt from attachment or sale, either before or after they are actually payable, while they were in the custody of the employer and once the funds paid and deposited in bank, they merge in the common pool and lost their immunity and thereby the dismissal order of the Execution Petition of the amount not attachable is unsustainable and is liable to be set aside.

The respondent-judgment debtor even served with notice, failed to attend and participate, having received and acknowledged the same, hence taken as served.

Heard learned counsel for the revision petitioner/decreed holder supra at length and perused the provisions and prepositions of law and the material on record.

Now the point for consideration is:

“Whether the amount lying in the Bank account of the judgment debtor sought for attachment by the decree holder/revision petitioner is attachable or still got immunity for exemption under Section 60 (k) and (g) or the like, and whether the impugned order of the learned Junior Civil Judge requires interference by this Court while sitting in revision and to what extent?”

The observations of the Apex Court in *Radhey Shyam Gupta Vs. Punjab National Bank and another* (supra) particularly

from paragraph Nos.33 and 35 reproduced above indicates that except for the decision in Jyoti Chit Fund case (***Union of India Vs. Jyothi Chit Fund and Finance***^[2]) the consistent view taken thereof supports the contentions that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retrieval benefits paid to the appellant. Infact in Jyoti Chit Fund case(supra), the Apex Court observed particularly at paragraph Nos.11 and 12 as follows:

“11. The finer distinction sought to be made by Shri Rohatgi that because the appellant has already retired, therefore, the provident fund and allied amounts have already fallen due and have ceased to possess the complexion of sums 'by way of provident fund under ss. 3 and 4', is fallacious. On first principles and on precedent, we are clear in our minds that these sums, if they are of the character set up by the Union of India, are beyond the reach of the court's power to attach. Section 2 (a) of the Provident Funds Act has also to be read in this connection to remove possible doubts because this definitional clause is of wide amplitude. Moreover, s-60(1), provides (g) and (k), leave no doubt on the point of non- attachability. The matter is so plain that discussion is uncalled for.

12. 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 possible be entertained on this question, the decision in Union of India v. Radha Kissen Agarwala & Anr. erases them. Indeed our case is an afortiori 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 them, 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 over-rule the contention.”

Infact in Jyothi Chit Funds case (supra) for that conclusion of saying the benefits if they are in the character set out by the Union of India are beyond the reach of the Courts power to attach until they reach the hands of the employee and it was relied for that conclusion, the earlier expression of the Apex Court in ***Union of India Vs. Radha Kissan Agarwala***^[3]. The sum and substance of the expression, referred to the earlier expression in reiterating the law is that once the terminal benefits lost the character before or after they are actually payable (Explanation 1 to Section 60 of C.P.C. as per 1976 amendment) and the moment it is paid by the Government and reached the hands of the employee, directly or indirectly, in any manner it loses the character of immunity from attachment or exemption. In fact the Apex Court in Radhey Shyam case (supra) observed in paragraph No.33 supra that the above decision in Jyothi Chit Fund has been considerably watered down by later decisions which have been indicated in paragraph No.22 herein before and it has been held that gratuity payable would not be liable to attachment for satisfaction of a decree in that case as per the proviso (g) to Section 60 of C.P.C.

The another expression referred to in paragraph No.22 of Radhey Shyam Gupta case (supra) reads as follows:

“22. Ms.Shobha’s submission finds support in the decision of this Court in Calcutta Dock labour Board Vs. Sandhya Mitra (1985) 2 SCC 1: 1985 SCC (L&S) 383 wherein it was reaffirmed that gratuity payable to dock workers under a scheme in absence of a notification under Section 5 of the Payment of Gratuity Act, 1972, would not be liable to attachment for satisfaction of a court’s decree. The same principle was reiterated by this Court in Union of Indai Vs.

Wing Commander R.R. Hingorani and Gorakhpur
University Vs. Dr.Shitla Prasad Nagendra.

The reading of paragraph Nos.22, 33 and 35 referred above in Radhey Shyam Gupta's case (supra) is only in dealing with payment of gratuity from retirement by notification under the Gratuity Act and not in relation to pensionary benefits; though it is stated as if under Section 60 (g), but infact in Section 60 provisos out of the clauses (a to p), clause (g) speaks that, the said funds and gratuity allowed to pensioners by the Government of a local authority or on any other employee are payable out of in-service family pension funds notified in the official gazette by the Central Government or the State Government in its behalf. It is to say Section 60 (g) is not for provident funds but for sti-funds, gratuity and pension or pensionary benefits. Infact Section 60 proviso (k) that covers provident fund which says of compulsory deposits and other sum not derived from any funds to which the provident funds Act, 1925 for the time being applied insofar as they are derived by the said Act ought to be liable to attachment.

Paragraph No.23 of the judgment says in Jyothi Chit Fund and Finance(supra), while dealing with provisions of Sections 3 and 4 of the Provident Funds Act, 1925 observed about prohibiting of attachment. It is to say the provisions of the Act speak such of the amount not liable to attachment. It is in fact clarified by explanation 1 of Section 60 C.P.C., after the proviso and clauses (a to p) from the specific wording of the amounts payable in relation to the matters mentioned in clauses (g, h, l, l-a, j, l and o) are exempt from attachment or sale, where before or after they are actually payable, and in case of salary attachable portion thereof is liable to attachment, whether before or after it is actually payable. From the wording of the explanation, it is crystal clear

that having gone to interpret or add or substitute or to borrow anything for interpretation is the bar applied before or after they are actually payable that too for the monies payable. It is to say the bar is before money payable in the absence of specific saying of continuation of the immunity after paid. Thus, the moment the amount either directly or indirectly paid to the account of the employee or by cash or by transfer at the authorization to somebody it seizes the character of money payable before or after they are actually payable, since already paid. Infact even coming to the expression in ***Gorakh University and others Vs. Dr.Shitla Prasad Nagendra and others***^[4] in paragraph No.5, it was observed that this Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government, but are rights accrue and property in the hands of employer and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severally by imposing penalty in the form of payment of interest. The revision filed itself is for relief questioning withholding or adjusting of the amounts from the account of the employee without actual payment and the relief was allowed by negating the stand of the University for no right to withhold. There whether the pension and gratuity and other benefits even after actually paid by the employer to the employee still got immunity from attachment or not was not fallen for consideration. Coming to the other expression of ***Union of India Vs. Wing Commander RRH***^[5], a perusal of the judgment more particularly from paragraph No.10 they reproduced paragraph Nos.11 and 12 of Jyothi Chit Fund case (supra) by reiterating the principle therein and nothing deviated much less distinguished therefrom.

Now coming to the lower Court's order placing reliance of Radhey Shyam Gupta (Supra) expression stated in paragraph No.33; at the cost of repetition it is not held that the decision in Jyothi Chit Fund (supra) is not good law and not even that is explained or distinguished; but for showing the principle laid down therein has been considerably watered down by the later decisions referred in paragraph No.22, supra, for what the expression stated and in what context as discussed above. Thereby from the principle covered by the earlier expressions supra more particularly from the wording of explanation 1 of Section 60, the immunity from attachment is only till the amount actually payable and not after the moment paid in any manner. Once the Section is very clear it can be said Radhey Shyam Gupta is confined to the facts of that case, for the reason the principle laid down in Jyothi Chit Fund case (as can be seen from what is discussed supra) is reiterated in Wing Commissioner's case (supra) particularly at paragraph No.10. From that now coming to the facts in the counter filed by the judgment debtor covered by the impugned order of the lower Court paragraph No.3, he did not take any of the amount of Rs.8,00,000/- and there is no amount lying in his bank account as pensionary benefit, or as gratuity or as a provident fund in claiming for recovery under execution. Though he is the best person to say from his personal knowledge exclusively including under Section 106 of the Evidence Act, apart from it no plea; coming to the evidence if at all RW3 in saying the South Central Railway, Guntakal paid his retirement benefits and credited the same into his account and except that there is nothing to say the other benefits or total amount in the bank account are exempted from attachment. His version in the chief examination as RW3 is also as vague as anything, apart from the fact that as

per RW1's evidence or from the RW.3's evidence there is nothing as to when the amount were actually credited to the account and what were the amounts earlier in the account and how the account operated and how to consider the subsequent withdrawals. No such contest with details in the counter of the judgment debtor raised as can be seen from the inception of the account opening to the date of attachment to make out there from to reflect any amount out of it to the so called exemption to claim, much less by placing reliance for that upon Radhey Shyam's case (supra); but for simply relied at the observation of the Apex Court in Radhey Shyam case to infer the amount not liable for attachment; the lower Court did not even discuss the evidence or facts which are material.

Having regard to the above, the lower Court's impugned order is unsustainable in particular on facts leave about from the clear wordings of Section 60 Explanation 1 that is lending support to the Section from the expression in Jyothi Chit Fund case (Supra) and Wing Commander case (supra).

Here it is important to note that, as per order XXI rule 52, under which the attachment sought and made covered by the impugned order of the lower Court and dismissed the application ultimately of not entitled, speaks of attachment of any property in custody of Court or before other officer. The bank where the amount of the judgment debtor is lying is neither in the Court nor before the officer. It is to say order XXI rule 52 has no application at all but for at best order XXI rule 51 speaks of attachment of negotiable instrument etc., in its wording whether the property is negotiable instrument is not disputed in the Court nor in the custody of the public officer, the attachment shall be made by

actual seizure, and the instrument shall be brought into the Court and held subject to further order of the Court.

The prayer to be sought is for seizure of the FDR. At best invoking order XXI rule 51 otherwise attachment of order XXI rule 46 of attachment of debt, share and other property not in possession of judgment debtor it can be said the FDR only lying with the judgment debtor and the money is invested in bank so far as the savings bank account is concerned, the S.B.Account with cheque power to withdraw lies with judgment debtor, apart from right of withdrawal by using debit card from an ATM and the amount lying with bank is thereby otherwise to resort under order XXI rule 46 that is applicable if not Rule 51 and not at all rule 52.

Having regard to the above, though the impugned order of the lower Court of the amount is not liable for attachment is unsustainable as not covered by the exemptions under Section 60 of CPC for what is discussed above, the application filed under order XXI rule 52 is however unsustainable. Subject to the above observations the revision is disposed of giving liberty to the petitioner/decreed holder to file fresh application for attachment and recovery of the said amount as the case may be.

Consequently, the miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

21-09-2015

Note:

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[\[1\]](#) AIR 2009 SC 930

[\[2\]](#) (1976)3 SCC 607

[\[3\]](#) 1969 (1) SCC 225

[\[4\]](#) 2001 (6) SCC 591

[\[5\]](#) 1987 (1) SCC 551