

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1597 of 2016

Date of Decision.04.03.2016

2. C.R. No.1614 of 2016

Gurcharan Singh

.....Petitioner

Vs.

Saudagar Singh

.....Respondent

Present: Mr. P.S. Dhaliwal, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

1. Both the revision petitions are connected and are being disposed of by this common order. The revision petition in C.R. No.1597 of 2016 is against the order of attachment of amount lying to the credit of bank account maintained by the petitioner-defendant. The contention is that the entire amount of what is credited to the bank retains the character of salary obtained from the employer and it cannot be attached more than the extent permitted under Section 60(1)(i) CPC.

2. The argument is completely misplaced, for what is attached is not salary but it is the amount standing to the credit of the plaintiff in his bank-HDFC. The moment the amount is credited to the SB account, it will lose the character of salary and the provision of Section 60(1)(i) CPC cannot apply. The provision is intended to operate only against an employer as a garnishee who holds an amount to the credit of judgment debtor. If the amount is sought to be, therefore, attached as a salary

which is disbursed at or before disbursement by the employer, Section 60(i) will apply; otherwise not.

3. The above statement of law finds an echo from a judgment of Division Bench of Bombay High Court in *Parlhad Gangadhar Joshi Vs. Mst. Sakhubai* 1961 AIR (Bombay) 142 where the wife who obtained a decree for maintenance was seeking for arrest of husband and relied on salary remittances of ₹84/- into his bank account as proof of the requisite means. The husband's contention, inter alia, was that the salary which was less than ₹100/- was exempt from attachment under Section 60(1) CPC prevailing at that time. The Court held that:-

“....still we are unable to see how the salary which was received by the judgment debtor from the Municipal Committee cannot be taken into account in judging what were his means or capacity to pay.....It seems to us that what clause (i) of the proviso to Section 60(1) prohibits is that the salary qua salary cannot be attached or be brought to sale. In other words, so long as the money is in the hands of the employer as an amount due to the employee, the bar operates as against its attachment or sale. But once the salary is paid to the judgment debtor and it becomes his property, we can see no reason or justification for holding that it would still continue to be unattachable or unsaleable in his hands.....”

The proposition of law is clearly brought out by the above expression.

4. The order of attachment issued by the Executing Court was perfectly justified and there is no error for interference. The revision

petition in C.R. No.1597 of 2016 is dismissed.

5. In yet another case in C.R. No.1614 of 2016, the very same judgment debtor has suffered a warrant for arrest. I will find no reason for interference, for, if according to the judgment debtor, he has no means to pay and if he is arrested and brought before the Court, the Court will not confine him in civil prison till it elicits information from the decree holder that he has the means to pay the amount for which realization of the decree is sought. The Court will take note of the fact that in yet another connected case, there has been an attachment of the amount in bank and whatever remains is the only amount that will be possible for payment. If the decree holder is unable to show any other means to pay the amount which is the subject for recovery through arrest, the Court will release him when he is produced before the Court after recording evidence from the decree holder and the judgment debtor with reference to the means.

6. Having regard to the nature of order that is passed requiring further enquiry to be made before the judgment debtor is actually sent to the civil prison, I dispense with notice to the respondent and dispose of the civil revision in C.R. No.1614 of 2016.

(K. KANNAN)
JUDGE

March 04, 2016
Pankaj*