IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-3365-2011(O&M)
Date of decision : 08.01.2016

Ranjit Singh

... Petitioner

Versus

New India Assurance Company and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

REKHA MITTAL. J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking quashing of order dated 28.04.2011 (Annexure P4) as well as order dated 13.11.2006 whereby his salary has been ordered to be attached in the execution filed by the respondent-Insurance Company who has been given the right of recovery against the insured while awarding compensation in favour of Jagan Nath and others (proforma respondents).

Counsel for the petitioner has submitted that 1/3rd salary of the petitioner was ordered to be attached for realization of amount which the Insurance Company was held entitled to recover from the insured in pursuance of the award passed by the Motor Accident Claims Tribunal, Ludhiana (in short 'the Tribunal'). It is argued that remittance from the salary of the petitioner on the basis of attachment is being made for the past more than 3 /4 years which is in violation of the provisions of Section 60 of the Code of Civil Procedure as it provides that attachment of salary of the judgment debtor cannot be allowed for a period more than 24 months. It is prayed that a direction may be issued to release his salary from attachment.

Counsel for the respondent-Insurance company has not disputed that remittance from salary of the petitioner in pursuance of an order of attachment passed by the executing Court is being made for the past more than 24 months. However, it is submitted that the petitioner cannot escape his liability to pay the decretal amount from his other assets.

I have heard counsel for the parties and perused the records.

It is an admitted position of the case that remittance from salary of the respondent is being made for the past more than 24 months in the execution filed by the respondent-Insurance Company. Section 60 of the Code of Civil Procedure deals with property liable to attachment and sale in execution of decree. The proviso appended to Sub Section 1 of Section 60 provides for the properties that shall not be liable to attachment or sale. Clause (i) of proviso appended to Section 60(1) deals with attachment of salary and the same being germane to the controversy is reproduced below for ready reference:-

"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:*

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

(a) to (h) XXX XXX XXX

(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder 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."

A bare reading of the aforesaid extract makes it evident that attachment of salary of the judgment debtor cannot be allowed for a period more than 24 months where such attachment is made in execution of one and the same decree. As salary of the petitioner has been attached and remittance therefrom is being made for the past more than 24 months, the petitioner is entitled to the relief claimed and his salary is liable to be exempted from attachment in the execution proceedings.

In view of what has been discussed hereinabove, the petition is allowed and salary of the petitioner attached in the execution application filed by the Insurance Company shall be exempted forthwith. However, the respondent-Insurance company is at liberty to recover the balance amount from other assets of the petitioner in accordance with law.

(REKHA MITTAL)
JUDGE

January 08, 2016.
Davinder Kumar