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

Crl. Misc. 22247 of 2017 in/and
Crl. Revision (F) 279 of 2017 (O&M)
Date of decision: December 15, 2017

Om Parkash

...Petitioner

Versus

Javitri Devi

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Virender Kumar, Advocate,
for the petitioner.

Mr. Satya Vir Singh Yadav, Advocate,
for the respondent.

JAISHREE THAKUR, J.

<u>Crl. Misc. 22247 of 2017</u>

For the reasons stated in the application, delay of 48 days in filing the revision is condoned.

<u>Main case</u>

1. The petitioner herein seeks to challenge order dated 03.03.2017 passed by the District Judge, Family Court, Karnal, by which a application for interim maintenance filed by the respondent has been allowed and the respondent has been granted interim maintenance of ₹4000/- per month from the date of filing of the petition along with litigation expenses.

2. In brief, the facts are, that the petitioner and the respondent solemnized a marriage around forty years ago and out of this wedlock a female child was born. After the respondent was turned out of her

matrimonial home, she started to reside with her daughter in Karnal. Having no source of income, she filed a petition under section 125 of the Code of Criminal Procedure (for short **'the Code'**) seeking maintenance, along with an application for interim maintenance. The respondent-wife alleged that she has no source of income, whereas the petitioner has retired from HUDA and has a pension, hence she would be entitled to receive maintenance. The petitioner contested the matter stating that the respondent had not come to court with clean hands and in fact she had left the matrimonial home of her own accord. The District Judge Family Court, Karnal, held that the petitioner is liable to pay 50% of his pension received to his destitute wife as interim maintenance. Aggrieved against the said order the instant revision petition has been filed.

3. Mr. Virender Kumar, learned counsel appearing on behalf of the petitioner, argues that the maintenance, as assessed, is on the higher side as the petitioner has a pension of ₹9,500/- per month and has to maintain himself by paying for electricity, water and other commodities. It is submitted that a sum of ₹2,00,000/- had been deposited in the shape of a Fixed Deposit in favor of the respondent and apart from that he had given a sum of ₹1,00,000/- to her. It is submitted that he had given a sum of ₹10, 00,000/- to his son-in-law for purchasing a plot in Delhi and the entire transactions had been met out of his retiral benefits. It is argued that apart from transferring funds, a house was purchased in the name of the respondent and their daughter Munni Devi and the petitioner had transferred the said house in favor of her daughter. It is argued that the petitioner has a meager pension of ₹9,500/- per month. It is also argued that the District

Judge, Family Court, has erred in awarding 50% of the pension when in fact pension cannot be attached. It was also brought to the notice of this court that condition warrants of arrest have been issued, vide order dated 12.9.2017, against the petitioner by the District Judge, Family Court, Karnal, during the pendency of the proceedings in the this Court, for not making payment of interim maintenance, under an application filed under Section 125 (3) of the Code.

4. Per contra, learned counsel appearing on behalf of the respondent/wife has argued that the petitioner being the legally wedded husband of the respondent/wife, is under a legal and moral obligation to maintain his wife. It is argued that he is getting a pension of ₹9,500/- per month and the respondent having no source of income is entitled to be maintained out of the said pension. He relies upon judgment rendered in **Ram Kanvar versus M/s Ram Richhpal Banarsi Dass 2002 (2) Civil Court Cases 719,** wherein there was a challenge in the revision petition against an order passed by the executing court directing the Treasury Officer to remit the amount of two third pension of the judgment-debtor/petitioner till realization of the decretal amount. It is contended that pension can be attached to satisfy the maintenance amount due and payable to the respondent.

5. I have heard the learned counsel for the parties and have also perused the judgment relied upon.

6. An argument has been raised by the counsel for the petitioner, that the pension of the petitioner cannot be attached. It is submitted that the District Judge erred while relying on the judgment rendered in **Vijay**

Kumar Versus State of Punjab and others reported as 2013 (3) RCR (Civil) 323 wherein the Division Bench of this court ordered 50% of the salary of an employee to be deducted and the said amount paid to his destitute wife under Section 125 of the Code. It is argued that the said judgment would not be applicable since pension cannot be attached.

7. Under the circumstances, a question that arises for consideration in this case is, whether the District judge has erred in awarding 50% of the pension of the petitioner, to the respondent/wife as maintenance?

8. Section 11 of the Pension Act 1871 reads as:

> "*11. Exemption of pension from attachment.- No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.*

Section 11 of the Pension Act 1871 protects the pension of a person from seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court. **Section 60 CPC allows for attachment of property and its sale in execution of a decree. Section 60(1) CPC specifies** following property as 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. However certain properties are exempt to such attachment or sale and 60 (1) (g) of the CPC is one such exception which reads as,

> *"(g) stipends and gratuities allowed to pensioners of the government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the official gazette by the central government or the state government in this behalf, and political pension."*

9. Both Section 11 of the Pension Act of 1871 and Section 60 CPC, protect the pension of a person from attachment. The earlier view taken by the Supreme Court in a judgment rendered in **(1976) 3 SCC 607 Union Of India Vs. Jyoti Chit Fund and Finance and another** was that that provident fund amounts, pensions and other compulsory deposits retain their character until they reach the hands of the employee and thereafter could be attached in the hands of the pensioner :

> "***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 possibly be*

entertained on this question, the decision in Radha Kissen [Union of India v. Radha Kissen Agarwalla, (1969) 1 SCC 225 : (1969) 3 SCR 28] erases them. Indeed, our case is an a fortiori one, on the facts. A bare reading oj Radha Kissen makes the proposition foolproof that so long as the amounts are provident fund dues then, 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 overrule the contention".

This view was subsequently watered down in the judgment rendered in **Union of India Versus Wing Commander R.R Hingorani (1987) 1 SCC 571.** In **Wing Commander R.R Hingorani c**ertain dues were payable by the government servant on his retirement towards occupation of his official accommodation. Since dues towards occupation of the said premises were not cleared before his retirement the government sought to recover the same from his pension which was commuted. It was in this background that the matter eventually reached the Supreme Court where it was held that no recoveries could be made from the commuted pension payable to the respondent, which was clearly against the terms of Section 11 of the Pension Act, 1871.

10. Another judgment followed in case of a **Radhey Shyam Gupta versus Punjab National Bank (2009) 1 SCC 376** in which it has been held, that pension and gratuity even when received by a retiree, do not lose their character and would continue to be covered under proviso to Section 60 (1) (g) of the CPC. This ratio was laid down while considering the judgments

rendered in **Jyoti Chit Fund and Wing Commander R.R Hingorani.** The former judgment was dissented with, while approving the ratio as laid down in **Wing Commander R.R Hingorani.**

11. The judgment rendered in **Vijay Kumar Versus State of Punjab reported as 2013 (3) RCR (Civil),** as relied upon by the counsel appearing on behalf of the respondent, is not applicable in the instant case since that pertained to attachment of salary to pay maintenance under Section 125 of the Code, whereas the petitioner herein is a retiree and not earning a salary.

12. Section 125 of the Code of Criminal Procedure has been enacted to ensure that a wife, minor child or old-age parents are maintained and not subjected to vagrancy and destitution. Grant of maintenance to the wife has been perceived as a measure of social justice by the courts and the said section falls within the constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution of India. It provides speedy remedy for supply of food court clothing shelter to the deserted wife while ensuring that the husband fulfills his moral and legal obligation to support his family be it a minor child, wife or aged parents. So in that background there is no infirmity in the order of the District Judge awarding interim maintenance. The final maintenance has still to be settled after taking into account the capacity of the petitioner to pay maintenance as well his liabilities. There is only an embargo, as enacted in Section 11 of the Pension Act and under Section 60 (1) (g) CPC, to attaching of pension in satisfaction of the said amount.

13. In view of the discussion held above, a deserted wife would be

entitled to maintenance under Section 125 of the Code, which has been allowed in the instant case. At the moment only conditional warrants of arrest have been issued and as on date there is no order of attachment of pension. It is only in those circumstances that the petitioner could have challenged the same by relying upon the judgments referred to above.

14. Therefore, finding no infirmity in the order dated 3.3.2017 and the order dated 12.9.2017, no interference is called for. Dismissed.

December 15, 2017 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes