

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2318/2018

Anantkumar s/o. Kisanrao Patil,
Aged about 76 years,
Occupation : Agriculturist,
R/o. At Post Poharadevi,
Tah. Manora, District – Washim.

..... PETITIONER

// VERSUS //

1. Laxmanrao Hanguji Edatkar,
(deceased), through L.Rs.

1a) Deelip Laxmanrao Edatkar,
Aged about 55 years, Occ. Editor,
Dainik Matdar, R/o. Mamta
Prakashan, Sakarna Road, Amravati,
Tah. and District – Amravati.

1b) Anita Sahebrao Karde,
Aged 52 years, Occ. Service,
R/o Plot No.17, Vidya Nagar,
Modern School, Koradi Road,
Post Godhani Railway,
Nagpur. (Amendment carried out as
per Court's order dated 21.12.2018)

1c) Kalpana Balaji Khadke,
Aged about 50 years,
Occ. Household work,
R/o. Shiwai Nagar, Nanded,
Tah. and District Nanded.

1d) Sau. Sunita Pramod Kharabe,
Aged about 48 years,
Occ. Household work, R/o. Vidya
Nagar, Pusad, District – Yeotmal.

- 1e) Sanjay Laxmanrao Edatkar,
Aged about 45 years,
Occ. Cultivator, R/o. Near Rest House,
Washim Road, Pusad, District Yeotmal.
- 1-f) Chitra Vinodrao Mohod
R/o E-13, Liksangam Vihar,
DP Road, Medi Point Hospital,
Aundh, Pune. (Amendment as per Court
order dated 2.8.2019)
- 1g) Vijay Laxmanrao Edatkar,
Aged about 41 years,
Occ. Cultivator, R/o. Near Vishram
Gruha, Washim Road, Pusad,
District Yeotmal.
- 2) Vittal Munaji Bhalerao,
Aged about 59 years, (Amendment carried out as
R/o Empire State Chinchwad, per Court's order dated
M.2, House No.402, Pune 21.12.2018)
Mob. No.9423665421/9130012631 RESPONDENTS

Mr. S. S. Dhengale, Advocate for petitioner.
Mr. O. A. Ghare, Advocate for respondent No.1(a) & 1(e).
None for respondent Nos.1(b,c,d,f and g) and 2 (served)

CORAM : AVINASH G. GHAROTE, J.
DATED : 26/10/2021

ORAL JUDGMENT :

- 1] Heard Mr. Dhengale, learned counsel for the petitioner and
Mr. Ghare, learned counsel for the respondent Nos.1(a) and 1(e). None
appears for respondent Nos.1(b,c,d,f and g) and 2 though served.
- 2] **Rule.** Rule made returnable forthwith.

3] Heard finally by consent of the learned counsel appearing for the parties.

4] The order dated 10.04.2018, passed by the learned Civil Judge Junior Division, Manora below Exh.92 in Regular Darkhast No.4 of 2012, has been challenged in the present petition on the ground that the attachment of the pension account of the petitioner who is Judgment-Debtor No.1 is statutorily prohibited not only under Section 11 of the Pensions Act, 1871, but, also under the provisions of Section 60 (1)(g) of the Code of Civil Procedure.

5] Reliance is placed upon *Union of India Vs. Jyoti Chit Fund and Finance and others*, AIR 1976 SC 1163; *Dinkar Tippanna Mirajkar Vs. Bank of India, Jaisingpur*, 2002 (3) Mh. L.J 791 and *Radhey Shyam Gupta Vs. Punjab National Bank and Anr.*, AIR 2009 SC 930. It is therefore, submitted that the impugned order which directs the attachment of the pension account of the petitioner is unsustainable in law.

6] Mr. Ghare, learned counsel for the respondent Nos.1(a) and 1(e), submits that there was nothing on record before the learned Executing Court to point out that the account which was attached of the petitioner / Judgment-Debtor No.1 was a pension account. He further

submits that once the amount of pension is deposited in the account of the employee, it loses the characteristics and incidence of pension, and therefore, would come out of the rigor of Section 60(1)(g) of the Code of Civil Procedure and so also Section 11 of the Pensions Act, 1871. He therefore, submits that considering this position, the learned Executing Court has rightly attached the account of the petitioner, though it may be a case that the amount of pension has been and is being deposited in the said account.

7] A perusal of Section 11 of the Pensions Act, 1871 would indicate that what is exempted from attachment is the pension payable to an ex-employee on account of past services. The provisions of Section 11 of the Pensions Act, 1871 do not qualify the pension in any manner whatsoever. Once an amount is being received as pension irrespective of in which account it is deposited it would not lose its character of being received on account of being a pension payable by an employer to its employee. The distinction made by the Hon'ble Apex Court in ***Jyoti Chit Fund and Finance*** (supra) has been reconsidered thereafter, in ***Radhey Shyam Gupta*** (supra) wherein it has been held that the retiral benefits such as pension and gratuity do not lose their character even after they have been received by the employee and continue to be covered by the proviso (g) to Section 60 (1) of the Code of Civil Procedure. A similar view, taken in ***Calcutta Dock Labour Board and another Vs. Smt.***

Sandhya Mitra and others, (1985) 2 SCC 1; Union of India and another Vs. Wing Commander R.R. Hingorani (Retd.), (1987) 1 SCC 551 and Gorakhpur University and others Vs. Dr. Shitla Prasad Nagendra and others, (2001) 6 SCC 591, has been duly noticed and considered in *Radhye Shyam Gupta* (supra).

8] The view taken in *Radhye Shyam Gupta* (supra) has been also followed in *K. Murugesan Vs. Ulaganathan and Anr, AIR 2009 Madras 169*.

9] In the above view of the matter, the impugned order passed by the learned Executing Court which takes a contrary view, cannot be sustained and the same is hereby quashed and set aside and the application at Exh.92 is hereby dismissed.

10] Needless to say that the decree-holder shall be entitled to take recourse to all the remedies as available in law, for realization of the decree and the petitioner herein, shall also be bound by the statement as made in para 14 of the writ petition, whereby the petitioner has offered the agricultural land bearing Survey No.111, situated at Mouza Poharadevi, Tq. Manora, District Washim to be attached and sold for satisfaction of the decree, sought to be executed, which is also the position reiterated in the pursis dated 24/04/2018 placed on record vide

Stamp No.5684/2018.

11] The Writ Petition is allowed. There shall be no order as to costs.

12] Rule is made absolute.

(AVINASH G. GHAROTE, J)

Sarkate.