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16.08.2023
D.Hira
Court No. 12

**In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**MAT 182 of 2017
With
CAN 1 of 2017 (Old No. CAN 1901 of 2017)**

**Shamsunessa
Versus
Union of India & Ors.**

**Md. Salahuddin,
Md. Ahsanuzzaman,
Md. Raziuddin.
... for the appellant**

No representation for the respondents.

Heard Mr. Md. Salahuddin, learned counsel appearing
for the appellant.

The appellant's husband was an employee under the
Kolkata Port Trust and died on 11.12.2000. According to
the appellant, the respondents granted family pension and
also released all the retiral benefits but withheld an amount
of Rs.50,000/-. When the appellant demanded to release
the said amount the respondents informed the appellant
that the said amount will be released in due course but
failed to do so.

Hence, the appellant filed the writ petition being W.P.
No. 21065 (W) of 2009.

Before the learned Single Judge, learned counsel
appearing for the respondents submitted that in the three
execution cases the total sum of Rs.69,257/- were attached
and the Port Trust has made over the said amount to the

said Court and also submitted that no other amount is due and payable by the Port Trust to the appellant.

Accepting the case of the respondent no. 1/Kolkata Port Trust, by the order dated 22nd December, 2016 the learned Single Judge dismissed the writ petition.

Challenging the said order the appellant has come out with the present appeal.

Learned counsel appearing for the appellant contended that the suit itself is not maintainable and bad in law and the same was filed after death of the employee.

As per Section 13 of the Payment of Gratuity Act, 1972, the gratuity amount payable to the employee cannot be attached by any order and prayed for setting aside the order of the learned Judge and prayed for a direction to the respondent to pay the amount.

From the materials on record, it is seen that in all the three execution proceedings filed against the husband of the appellant a sum of Rs.69,257/- were attached and the respondent no. 2/Port Trust has made over the said amount into the said Court.

As per Section 13 of the Payment of Gratuity Act, 1972, the gratuity payable to the employee cannot be attached.

In the present case, there is an order of attachment in the three execution cases.

It is the contention of the learned counsel appearing for the appellant is that the appellant came to know the execution proceedings only after filing the affidavit-in-opposition by the respondent in the writ proceedings. Even after coming to know of the execution proceedings, the

appellant has not approached the Court which ordered attachment to raise the said attachment and also for payment of the amount in the Court deposit by the Port Trust, till date.

In view of the same, the remedy available to the appellant is to approach the Court, which ordered attachment and raise all the objections now raised before this Court, for suitable order for getting redressal.

For the above reasons, the appeal fails and dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)