



W.A.(MD) No.1401 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On 09.07.2024	Judgment Pronounced On 29.07.2024
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JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.1401 of 2021

and

C.M.P.(MD) No5847 of 2021

1.The Managing Director/Joint Registrar,
Dindigul District Central
Co-operative Bank Ltd.,
Dindigul.

... 1st Appellant/
1st Respondent

2.Branch Manager,
Dindigul Central Co-operative Bank,
Dindigul Main Branch, Dindigul

... 2nd Appellant/
3rd Respondent

Vs

1.P.Muniyasamy

... 1st Respondent/Petitioner



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2.The Deputy Registrar of Co-operative Societies,
Dindigul.

... 2nd Respondent/
2nd Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 11.02.2021 passed in W.P.(MD) No.1326 of 2021 on the file of this Court.

For Appellants	:	Mr.S.Srinivasaraghavan
For R1	:	Mr.T.Palanisamy
For R2	:	Mr.A.Baskaran
		Additional Government Pleader

JUDGMENT

(Judgment was delivered by N.SESHASAYEE., J.)

This appeal is filed at the instance of Respondents 1 and 3 in W.P.(MD) No. 1326 of 2021 challenging an order dated 11.02.2021, passed by the learned Single Judge setting aside the proceedings of the second respondent dated 21.05.2020 attaching the savings bank of account which the first respondent/writ-petitioner has with the second appellant and to disburse the provident fund amount due to him.

2. In short, the issue involved in this case pertains to the legitimacy of an order of attachment that operates on the provident fund sum payable to the writ petitioner/first respondent herein.



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3. The facts are: the first respondent was working as an Assistant Manager with the appellant-bank. He was charged with certain allegations of irregularity and misappropriation of funds and was dismissed from service on 03.08.2018. Along side a surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, has also been initiated in which the first respondent along with few of the other staff of the Co-operative Society were fastened with the liability to pay a sum of Rs. 1,27,00,547/-.

4. Be that as it may, the first respondent has applied for payment of his provident fund amount. In the mean time, the second respondent herein viz., the Deputy Registrar of Co-operative Societies had passed an order attaching the savings bank account which the first respondent has with the appellant-Bank. Subsequently, on 03.08.2020, the provident fund amount was remitted by the trustees of the Provident Fund into the very account which was under attachment. It is in these circumstances, the first respondent had moved this Court with W.P.(MD) No.1326 of 2021.



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5. It was contended before the learned Single Judge that the provident fund amount is not managed by the Employees' Provident Fund Organisation, but by a Trust established by the first appellant under the Employees' Provident Funds and Miscellaneous Provisions Fund Act, 1952 (Central Act, 19/1952), and under Section 78(2)(c) of the Tamil Nadu Cooperative Societies Act, provident fund is not liable for attachment. This was resisted by the appellants herein on the ground that Section 78 of the Tamil Nadu Cooperative Societies Act will not apply, but only Section 10 of the Central Act, 19/1952 will apply.

6. The learned Single Judge has taken the view that, irrespective of whether Sec. 10 of the Central Act 19/1952, or Tamil Nadu Cooperative Societies Act, 1983, the position is identical and the provident fund amount stays safe beyond the reach of the powers of attachment. And accordingly, he directed that the order of attachment shall go. This order of the learned Single Judge is now under challenge in this appeal.

7. The learned counsel for the appellants submitted that the provident fund



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amount payable to an employee cannot be attached only as long as it retains the character of provident fund, and once it is credited into the savings bank account of the employee, it loses the character as 'provident fund' and it becomes his personal amount. In other words, when the provident fund amount is in the hands of the trustees of the provident fund, it cannot be attached as in a garnishee proceedings, but when it leaves the hands of the trustees of the provident fund, then it loses the very character as 'provident fund'. Reliance was placed on the ratio in ***M.Ravikumar Vs Registrar of Co-operative Societies and others*** [W.A.No.2362 of 2019, dated 13.04.2022] and ***Indian Overseas Bank vs. S.Mohammad Anis*** [Regular Second Appeal No.5344 of 2009, dated 22.11.2023].

8. Per contra, the learned counsel for the first respondent submitted that provident fund does not loses its character as provident fund even after it is credited into the account of the employee, more so when it is credited into an account which the first respondent could not operate, owing to the order of attachment passed by the second respondent.



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9.1 After carefully evaluating the rival contentions, this Court considers it fit to allow this appeal. The reasons are:

- a) Besides the existence of a decree-debt, for a court of a tribunal to pass an order of attachment following conditions are required: (i) that the debtor should possess property; and (ii) that he must have power of disposition or alienation over the same. An order of attachment operates not on the ownership of the property but on the power of alienation or disposition which the judgement-debtor has over the property.
- b) Accordingly, when the provident funds is in the hands of the trustees of the fund, then even the employee concerned does not have absolute power of alienation over the same. Besides the statutory bar that provident fund amount could not be attached, there is a jurisprudential basis for the same.
- c) Ordinarily, when the provident fund is credited into the savings bank account of an employee, then he gets absolute power of disposition over the same. To state it differently, the provident fund credited into the account of the employee will only be one of the sources of money



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that gets credited into his account, but so far as the power of disposition of the employee over the said sum is concerned, it is absolute which he could exercise like his money from any other sources. This precisely is the reason why the provident fund could be attached when the amount is credited into the savings bank account of the employee.

9.2 In the present case, no order of attachment of the provident fund of the first respondent has ever been passed as it is statutorily impossible, but it was made only to attach his savings account into which the provident fund amount was subsequently credited. And, this order attaching the savings bank account was not seen to have been made in anticipation that the provident fund of the first respondent might be credited to it. It could now be derived that the attachment of the savings bank account of the first respondent and freezing his power of operating the account is an extraneous factor, affecting only the first respondent's power of disposition of the amount which once possessed the character of his provident fund, and should not be construed as if the provident fund itself has been attached. An order of



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attachment of the savings bank account hardly affects the character of the amount in the said account, for it only impacts power of disposition and not the character of the amount in the account. As held earlier when once the provident fund leaves its custodian and is credited into the bank account of the employee, it loses its character as provident fund, and hence, the first respondent cannot have any grievance.

10. In conclusion, this appeal is allowed. The order dated 11.02.2021 passed in W.P.(MD) No.1326 of 2021 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

29.07.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

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N. SESHASAYEE, J.
and
P.VADAMALAI, J.

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To

The Deputy Registrar of Co-operative Societies,
Dindigul.

Pre-delivery Judgment made in
W.A.(MD) No.1401 of 2021

29.07.2024