IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:
The Hon'ble Justice Om Narayan Rai

WPA 27943 of 2024

Sri Apurba Manik
-Versus-
Tamluk Ghatal Central Co-operative Bank Ltd. & Others

For the Petitioner	:	*Mr. Chandan Misra,* *Mr. Debabrata Majumder*
For the Respondent No. 1:		*Mr. Ashit Kr. Chakraborty,* *Mr. Sunanda Mohan Ghosh.*
For the Respondent No. 2:		*Mr. Ankit Sureka,* *Mr. Biplab Das.*
Hearing is concluded on	:	*10th April, 2025.*
Judgment on	:	**10th April, 2025.**

Om Narayan Rai, J.:

1. The petitioner is aggrieved by the Warrant of Attachment of Movable Property, dated July 4, 2024 issued by the respondent no. 2 in Certificate Case No. 19 of 2018-2019.

2. Mr. Misra, learned Advocate appearing for the petitioner submits that the petitioner was the headmaster of Nabin Simulia Primary School.

He retired from services on July 30, 2018 and upon retirement, the petitioner has been receiving pension in respect of his said services. It is further submitted that the petitioner fell into dire financial straits and as such he had to avail of financial assistance to the tune of Rs.5,00,000/- from Tamluk Ghatal Central Co-operative Bank Ltd. (hereafter "the said Co-operative Bank"). The petitioner paid the equated monthly installments in respect of the said loan (hereafter "EMI") till April 11, 2015 but thereafter he could not pay the same for some time as he was financially distressed.

3. The petitioner claims that upon being pressurized by the Manager of the said Co-operative Bank, the petitioner paid a sum of Rs.1,04,247/- towards the defaulted EMIs to the said Manager of the said Co-operative Bank upon borrowing money from his friends and relatives but the petitioner was not issued any receipt in acknowledgement of such payment.

4. It has been alleged that the petitioner was asked by the said Bank Manager to come on any working day to collect the receipt for the aforesaid payment but despite several attempts, the petitioner failed to get the same. It has been further alleged that the petitioner lastly went to the said Co-operative Bank on February 08, 2016 and paid an installment of Rs.12,000/- in respect of the said loan but even on that day the said Bank Manager did not issue any acknowledgement receipt to the petitioner and therefore the petitioner stopped paying

the EMIs. The petitioner further submits that he was neither served with any notice of demanding repayment of the balance amount of loan nor any notice of any proceeding for recovery of any sum due from him in respect of the said loan.

5. It has been submitted on behalf of the petitioner that the petitioner was shocked to receive the impugned "Warrant or (*sic* of) Attachment of Movable Property" dated July 4, 2024 issued by the Certificate Officer and Assistant Registrar of Co-operative Societies Paschim Medinipur whereby the petitioner's Bank Account bearing No. 0188010632157 with the Punjab National Bank, Daspur Branch was attached and put on hold.

6. The petitioner submits that such attachment of the petitioner's account has led to a situation of penury for the petitioner inasmuch as the said account is the pension account of the petitioner where the petitioner has been receiving pension in respect of his services in the said school. The petitioner prays for setting aside the impugned warrant of attachment of the petitioner's account. The petitioner has also made a prayer that the Respondent No.3 may be directed to release 50% of the pension amount in favour of the petitioner till the "entire actual dues are" liquidated.

7. Mr. Chakraborty, learned advocate appearing for the respondent no. 1 disputes the submissions made on behalf of the petitioner and submits that as the petitioner failed to appear and contest the

proceedings for recovery of loan initiated against him under Section 139 of the West Bengal Co-operative Societies Act, 2006 despite service of summons therefore an award was passed against him *ex parte.* It is submitted that the petitioner's case that he was not served with any notice of the recovery proceedings, does not hold water.

8. Mr. Sureka learned advocate appearing for the respondent no. 2 submits that the writ petition should not be entertained inasmuch as the petitioner has an efficacious and alternative remedy in the form of an appeal before the Collector in terms of Section 51 of the Bengal Public Remands Recovery Act, 1930 (hereafter "the said Act of 1913"). It is submitted that the warrant or order of attachment impugned in this writ petition can very well be challenged before the appellate authority under section 51 of the said Act of 1930. However, while answering to the pointed query of the Court as to whether pension could at all be attached, Mr. Sureka has very fairly submitted that the same was not permissible. Mr. Sureka, while assisting the Court cites a judgment rendered by the Hon'ble Supreme Court in the case of *Radhey Shyam Gupta Vs. Punjab National Bank and Another*[1] and a judgment of a coordinate Bench this Court in the case of *Kashi Chandra Shaw Vs. UCO Bank and Another*[2]. It has been further submitted by Mr. Sureka that in terms of section 17 of the said Act

[1] (2009) 1 SCC 376
[2] 2024 SCC Online Cal 3133

of 1913, property liable to attachment in terms of section 60 of the Code of Civil Procedure, 1908 can be attached.

9. Considering the fact that the petitioner's only grievance as canvassed before this Court is that the petitioner's pension has been attached by the impugned warrant of attachment and keeping in view the settled legal position that pension paid/payable to a government servant is un-attachable, this Court is of the view that it would not be proper to relegate the petitioner to the statutory remedy of appeal.

10. While it is absolutely beyond any cavil of doubt that existence of an alternative remedy does not bar entertainment of a writ petition under Article 226 of the Constitution of India, it is also trite law now that a writ court would exercise discretion in favour of entertaining a writ petition if the same assails an order on the ground of the same having been passed without jurisdiction. In the instant case if the relevant account of the petitioner is one where pension payable to the petitioner is credited then the order impugned would indeed be without jurisdiction since the relevant officer would lack jurisdiction to attach the same. Therefore the writ petition is entertained.

11. The impugned warrant or order attachment dated July 04, 2024 issued under the provisions of sections 13 and 14 of the said Act of 1913 attaches the petitioner's Savings Bank Account No.0188010632157 with the Punjab National Bank, Daspur Branch.

The petitioner has alleged in the writ petition that the said account is the pension account of the petitioner.

12. Section 13 and 14 of the said Act of 1913 respectively provide for the time and mode of execution of a certificate.

13. Section 17 of the said Act of 1913 provides that property liable to attachment and sale in execution of a decree of a Civil Court under section 60 of the Code of Civil Procedure, 1908 (hereafter "CPC") may be attached and sold in execution of a certificate under the said Act of 1913 Act. A meaningful reading of section 17 of the said Act of 1913 would at once lead to the inference that a property cannot be attached by an order passed under the relevant provisions of the said Act of 1913 if attachment thereof has not been permitted under section 60 of the CPC.

14. Section 60 of the CPC expressly prohibits attachment of certain properties. The portion relevant for the present purpose is quoted hereinbelow:

> *"PROVIDED that the following particular shall not be liable to such attachment or sale namely:*
>
> (a) * * * *
>
> (b) * * * *
>
> (c) * * * *
>
> (d) * * * *
>
> (e) * * * *
>
> (f) * * * *
>
> *(g) Stipends and gratuities allowed to pensioners of the Government [or or 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;"

15. It is not in dispute that the school in which the petitioner served is a Government aided school and the petitioner has been receiving pension in respect of his services. Thus pension paid to the petitioner would clearly be out of the clutches of attachment.

16. Further, provisions of section 11 of the Pensions' Act, 1871 are also required to be considered in this regard. Section 11 reads thus:

> *"**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 of 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.*
> *[This section applies also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma.]"*

17. The afore-quoted provision also prohibits attachment of pension paid by Government to a person for his past services.

18. The judgment of the Hon'ble Supreme Court in the case of *Radhey Shyam Gupta* (supra)[1] is very instructive in this regard. Paragraphs 33 and 35 thereof are the most relevant for the present purpose and the same are quoted hereinbelow:

> *"33. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. <u>In other words, the High Court erred in altering the decree of the trial</u>*

court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in Jyoti Chit Fund case has been considerably watered down by later decisions which have been indicated in para 22 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code."

"35. We also agree with Ms Shobha that even after the retiral benefits, such as pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by proviso (g) to Section 60(1) of the Code. Except for the decision in Jyoti Chit Fund and Finance case, where a contrary view was taken, the consistent view taken thereafter supports the contention that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retiral benefits paid to the appellant." (Emphasis supplied by underlining)

19. The other judgment of a co-ordinate Bench of this Court in *Kashi Chandra Shaw* (supra)[2] also echoes the same view that pension cannot be attached. In the said case, this Court had the occasion to consider as to whether the pension payable to a person could be attached under the relevant provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter as the SARFAESI Act). Upon considering the facts of the said case as well as the provisions of Section 60 of the CPC, this Court held that pension payable to a person could not be attached even under the SARFAESI Act.

20. In view of the above statement and position of law, the petitioner's pension cannot be allowed to be attached in the case at hand as well. However, in the present case except for the petitioner's averments in the writ petition (which have not been disputed though) there is nothing on

record to establish that the relevant account in Punjab National Bank that has been attached is indeed the pension account of the petitioner.

21. Since in the facts of the present case it cannot be discerned with certainty as to whether the relevant bank account which is under attachment is actually the pension account or not, justice would be subserved if the respondent nos.1 and 3 are directed to take appropriate measures to satisfy themselves as regards the authenticity of the petitioner's statement that the relevant account under attachment is the petitioner's pension account. Such satisfaction must be reached by the said Respondent nos. 1 and 3 at the earliest and within a period of not more than three weeks from date.

22. Although the Respondents cannot be permitted to attach the petitioner's pension as already held hereinabove, yet, considering the petitioner's prayer for a direction upon the Respondent No.3 to release 50% of the pension amount in favour of the petitioner till the entire loan is liquidated, it is ordered that in case the Respondent Nos. 1 and 3 are satisfied that the account mentioned in the impugned order of attachment is the petitioner's pension account, the respondent no.1 shall be free to appropriate 50% of the pension amount towards liquidation of the loan amount actually due and owing from the petitioner.

23. It is clarified that although the impugned warrant or order of attachment dated July 4, 2024 issued by the respondent no. 2 in Certificate Case No. 19 of 2018-2019 shall not apply to any amount

credited as pension of the petitioner in the account mentioned in the said order of attachment, yet, in view of the petitioner's prayer for a direction upon the Respondent No.3 to release 50% of the pension amount in favour of the petitioner till the loan actually due and owing from the petitioner is liquidated, the aforesaid direction has been passed granting liberty to the respondent no.1 to appropriate 50% of the pension amount towards liquidation of the loan amount actually due from the petitioner.

24. As prayed for on behalf of the petitioner during the course of hearing, it is also recorded that if the petitioner approaches the said Co-operative Bank with a proposal for one time settlement of the loan, the said Co-operative Bank shall be free to consider such proposal in the right earnest and to take such decision as would be valid and legal in the eye of law.

25. With the aforesaid observations, the writ petition being WPA 27943 of 2024 is disposed of. No costs.

[Om Narayan Rai, J.]