

Sathiyabama And Ors. vs M. Palanisamy And Ors. on 20 October, 2003

Equivalent citations: 2004 (2) CTC 129, (2004) IILLJ 403 Mad, (2004) 1 MLJ 43

Bench: P Sridevan

Sathiyabama And Ors. vs M. Palanisamy And Ors. on 20/10/2003

ORDER

Prabha Sridevan, J.

1. The only question that arises for consideration in this revision is whether the amount due as provident fund, leave salary, gratuity etc., to the deceased employee can be attached in the hands of the employer pending the suit for recovery of money filed against the legal representatives of such employee for amounts borrowed by him.

2. One Mariappan is alleged to have borrowed a sum of Rs.1,50,000/- from the first respondent. Promissory note in evidence of the said loan is alleged to be executed on 20.10.2002. Mariappan died on 31.12.2002 and the petitioners are his legal heirs. The first respondent filed O.S.No.95 of 2003 for recovery of money. Pending suit, the first respondent filed I.A.No.224 of 2003 for attachment before judgment of the amounts aforesaid. The other respondents are the Railways-the garnishees. An order of attachment was passed, against which this revision has been filed.

3. Learned counsel for the petitioners submitted that these amounts cannot be attached and in support of his contention, he relied on (i) Percy Wood v. Samuel (AIR (30) 1943 Nagpur 333), (ii) Thaj Mahomed v. Balaji Singh (AIR 1934 Madras 173)(DB), (iii) [Union of India v. J.C.Fund & Finance \(DB\)](#), (iv) Lachmi Narayan v. Umaid Rai (AIR 1923 Oudh 21), (v) Nadirshaw v. Times of India (AIR 1931 Bombay 300) (DB) and (vi) Secretary of State for India v. Raj Kumar (AIR 1923 Calcutta 585). The learned counsel also denied the borrowal and raised several points in defence against of the suit claim. Those facts are not necessary for deciding this question and are not dealt with.

4. The learned counsel appearing for the Railways- respondents 2 to 4 also attacked the order of attachment in view of Section 60 CPC, Section 13 of Payment of Gratuity Act, Section 11 of Pensions Act and Sections 3 and 4 of the Provident Funds Act which exempt these amounts from attachment.

5. Per contra, learned counsel appearing for the first respondent submitted that the amount due as gratuity to the deceased employee and payable to the legal representatives of the deceased is not

exempted from attachment, since the property that was once held by the Department, became a debt to be paid to the legal representatives of the deceased and ceased to have the character of gratuity. Since it is only a debt in the hands of the Department, there is nothing wrong in attaching the property for realisation of the amounts. Reliance was placed on *Sathyavathi v. Bhargavi*, where it was held that the amount due as gratuity to deceased employee-Judgment debtor and payable to his legal representatives is not exempt from attachment.

6. Section 60(g) CPC contain exempts the following amounts from attachment:-

"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;"

Section 13 of the Payment of Gratuity Act reads thus:-

"Protection of gratuity---No gratuity payable under this Act (and no gratuity payable to employee employed in any establishment factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5") shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court."

Section 11 of the Pensions Act reads thus:-

"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."

Sections 3 and 4 of the Provident Funds Act protects the provident fund deposit from being assigned or charged and shall not be liable to attachment under any decree or order of any civil, revenue or criminal court. Section 10(2) of the Employees' Provident Funds & Miscellaneous Provisions Act is as follows:-

"Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member of the exempted employee (and shall also not be liable to attachment under any decree or order of any court.)"

(i) [In *Mettur Industries, Ltd., v. Velayutha Mudaliar* \(1961 \(1\) LLJ 279\)\(Madras\)](#), it was held that, when under the terms of the provident fund amount standing to the credit of a member became payable on the

expiry of six months from the date of discharge of the concerned member, the order of attachment made two days after the resignation of the employee, was illegal and prohibited by law, and that so long as the amount does not cease to have the character of provident fund either by payment of the same to the employee or by removing it from his credit in his provident fund ledger, the immunity against attachment continues.

(ii) In *A.Subbian v. Thiruvengkataswami* (1971 LAB. I.C.1595 (V 4 C 393)) it has held that so long as the amount regarding employees provident fund is in deposit with the employer and has not been paid over to the employee even after his retirement, it does not become the employee's property and is exempt from attachment. The learned Judge held that the provident fund amount is a compulsory deposit and will continue to be a deposit and not the property of the employee, until it is paid.

(iii) In *Pearly Andrew v. Official Assignee* the

Division Bench of the Bombay High Court held that even when the employee has become an insolvent, the amount standing to his credit, so long as it is with the Regional Provident Fund Commissioner and has not been paid to the insolvent, does not vest in the Official Assignee and the Official Assignee cannot lay any claim to it.

(iv) In *M.L. Sharma v. University of Rajasthan & Another* (1998 (2) LLJ 203) the learned Judge of the Rajasthan High Court held that the amount admissible on account of provident fund dues is not a part of remuneration or wages arising out of the contract of employment but is a liability imposed on the employer by virtue of the beneficial nature of the Act. The purpose and intent behind such Provident Fund Schemes is found in *Lalitaben Bhanabhai v. Laliben Bhanabhai* (F.L.R.1992 (64) 520), where construction of the word 'vest' under Section 10(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 came up for consideration. It was held:

"Similar protection is given to a nominee under sub section (2) of the Act. Therefore, the sole purpose of Section 10 seems to afford protection to the member of the Provident Fund Scheme against creation of any debt by the member so that after retirement he gets something to survive or in case of his death his heirs get something to live on. Therefore, the word "vest" is required to be given a limited meaning to the effect that as against attachment of the said amount for the debt or other liability incurred by the deceased member or the nominee, it shall vest in the nominee."

(v) In *Thaj Mahomed v. Balaji Singh* (AIR 1934 Madras 173)(DB), the Division Bench had to consider whether the provident fund of a deceased judgment debtor was liable under Hindu Law to pay his debt. In

those circumstances, the Division Bench held in the negative, but this will not apply to the present case. [In Union of India v. J.C.Fund & Finance \(DB\) the Supreme Court](#) held:

"So long as the amounts are provident fund dues, pensions and other compulsory deposits 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. The government is a trustee for those sums and has an interest in maintaining the objection in court to attachment."

A reading of the judgment of the Supreme Court reveals that there is no doubt that the provident fund amount, pension and other compulsory deposit retain such character, until they reach the hands of the employee. In *Lachmi Narayan v. Umaid Rai* (AIR 1923 Oudh 21) it was held that the gratuity, being gift by Railway administration, is not attachable, whether in the hands of the judgment-debtor or his heir.

(vi) In *Nadirshaw v. Times of India* (AIR 1931 Bombay 300) (DB), the Division Bench held as follows:-

"Interest of an employee in Employee's Death Benefit Fund, payable to children of the employee on death, and vesting in the trustees of the fund, the employee having no interest or disposing power over it during lifetime, cannot be attached in execution of the decree against the employee, or under O.21,R.46, on death of the employee."

(vii) In *Secretary of State for India v. Raj Kumar* (AIR 1923 Calcutta 585), the Division Bench held as follows:-

"The fact that the deposits become repayable to the officer when he leaves the service does not remove them from the category of compulsory deposits. A compulsory deposit is a deposit which goes into the fund as a compulsory deposit and is at that date received and classified as such, and there is no ground for a different classification of such deposits or a different description being applied to them after the officer's death or retirement. As long as the deposits subsist in the fund so long at any rate, both as a matter of legal construction and in the common and ordinary way of speaking, they are properly and correctly described as compulsory deposits. In this respect no distinction exists between the deposits made by the depositor himself on the one hand and the contributions in respect of those deposits and the interest or increment accrued on them on the other."

[In Union of India v. Wing Commander](#) , the Supreme Court held that Section 11 of the Pensions Act protects from attachment, seizure or sequestration, pension or money due or to become due on account of any such pension and this would include the commuted pension also.

7. In *Gopalachariar v. Deepchand Sowcar* (AIR 1941 Madras 207), this court held that after commutation of pension or a portion thereof, it ceases to be pension and becomes a capital sum, still the payment of the commutation amount being a payment on account of the pension, falls within the protection of Section 11 of the Pensions Act.

8. As regards the gratuity, in a decision reported in [Calcutta Dock Labour Board v. Sandhya Mitra](#), the Supreme Court, in a case very similar to the case on hand held that the gratuity payable to a dock worker under a scheme, is not liable to attachment. In that case, one Md. Safiur Rehman was the employee of the Calcutta Dock Labour Board. He was entitled to gratuity. The respondent before the Supreme Court filed a suit for recovery of the amounts against legal representatives of the said Md. Safiur Rehman and prayed for attachment of the gratuity payable to the said employee. The Board objected to it. The Chief Judge of Small Causes Court overruled the objection. Against that the appellants moved the High Court at Calcutta and contended that the gratuity payable to the workman was not liable to attachment. A Division Bench of the High Court of Calcutta affirmed the order of the Chief Judge of the Small Causes Court. On appeal by the Board the Supreme Court referred to Sections 13 and 14 of the Payment of Gratuity Act and held that the preamble of the Act clearly indicates the legislative intention that, the Act sought to provide a scheme for payment of gratuity to all employees like the employee of the Calcutta Dock Labour Board and that the gratuity payable to him squarely came within the purview of the Act and was entitled to immunity under Section 13 of the Act. The Supreme Court therefore, allowed the appeal and held that the view of the High Court that the gratuity payable to Md. Safiur Rehman was liable to attachment was erroneous. This being the legal position, I am bound to follow the same.

9. It is therefore clear that these amounts which are payable to employees, so that they would not be left resourceless at the time of retirement are exempted for attachment, whether they are payable to the employee or to his legal representatives. The various decisions referred to above also indicate that whether the employee has retired, or has become insolvent or has died the character of these amounts do not change so long as they are in the hands of the employer. The immunity from attachment is complete. The object of the provisions are to see that the employee gets these amounts after his retirement or his heirs get them after the employee's 'death' since the scheme is a beneficial one, the authority viz.: the employer is a trustee for those sums and is bound to object to the attachment. The second respondent has rightly maintained its stand against the attachment. There can be no legal justification for classifying or describing such deposits or amounts differently after the employee's death or retirement, so long as they are with the employees, there is protection from attachments. Provident Fund amounts, pension and other compulsory deposit retain their character until they reach the hands of the employee, any other view cannot be taken considering the conditions in which such exemption provisions operate and the class of persons they were intended to benefit. In one of the decisions, even the pay order had been made out but

it had not left the hands of the employer, the plea of the person seeking attachment on the ground that, really nothing further was required, was in vain. It still had not reached the employee and as the learned Judge picturesquely put it, "A miss is as good as a mile."

10. The court below erred in ignoring the objections raised by the Railway and ordering attachment. This Civil Revision Petition is allowed, setting aside the impugned order dated 13.3.2003. No costs. Consequently, no order is necessary in C.M.P.No.8079 of 2003 and it is closed.