

Shamsher Singh v. Gandhi Singh and others (R. Mittal, J.)

N. K. S.

Before R. N. Mittal, J.
SHAMSHER SINGH,—Petitioner.

versus

GANDHI SINGH AND OTHERS,—Respondents.

Civil Revision No. 2282 of 1982.

November 3, 1983.

Code of Civil Procedure (V of 1908)—Section 60(1) (i) and (l)—
Punjab Financial (4th Amendment) Rules, Volume II, 1983—Notes 2
and 3—Dearness allowance, City Compensatory Allowance, House

Rent Allowance and Medical Reimbursement—Whether liable to attachment under section 60(1) (l).

Held, that from a perusal of section 60(1)(i) and (l) and Notes 2 and 3 of the Punjab Financial (4th Amendment) Rules, Volume II, 1983, it is evident that in execution of a decree other than that of maintenance against an employee, a Court can attach 1/3rd of his salary after deducting Rs. 400 therefrom. The attachment can continue for recovering the amount of one decree for a maximum period of twenty-four months and thereafter it shall cease and the salary shall become exempt from attachment in execution of that decree. However, regarding the allowances payable to a Government servant as part of his emoluments, the appropriate Governments have been authorised to exempt them from attachment. The Punjab Government adopted the notification of the Central Government exempting from attachment allowances granted as compensation for higher cost of living in expensive localities, House Rent Allowance, Dearness Allowance or any other allowance granted to provide relief against increased cost of living and all amounts paid by way of reimbursement of medical expenses. Therefore, all such allowances and amounts paid by way of reimbursement of medical expenses are exempt from attachment.

(Para 5).

Petition Under section 115 C.P.C. for the revision of the order of Shri K. S. Bhullar, Sub Judge 1st Class, dated 23rd August, 1982 ordering to deduct Rs. 269 per month from the pay of the judgment debtor (Shamsher Singh) and send this attached amount to his court and fixing the case to come upon 22nd September, 1982 for further proceedings.

G. R. Majithia, Senior Advocate, H. K. Khanna, Advocate, for the Petitioner.

H. S. Gill, Advocate, for No. 1, 2.

JUDGMENT

Rajendra Nath Mittal, J.

(1) This is a revision petition by the judgment-debtor against the order of the Subordinate Judge 1st Class, Chandigarh, dated 23rd August, 1982.

(2) Briefly, the facts are that the petitioner judgment-debtor is drawing Rs. 825 as pay, Rs. 208.30 as D.A., Rs. 65 as C.C.A., Rs. 150 as H.R.A. and Rs. 10 as medical allowance, per mensem, the total of which comes to Rs. 1,258.30. After deducting an amount of Rs. 50. P.M. on account of contribution towards the General Provident

Shamsher Singh v. Gandhi Singh and others (R. Mittal, J.)

Fund, the net salary of the petitioner comes to Rs. 1,208.30. The executing Court, after deducting Rs. 400 under section 60(1)(i) of the Code of Civil Procedure (hereinafter referred to as the Code), ordered attachment of 1/3rd of the remaining amount towards the execution of the decree passed in favour of respondents Nos. 1 and 2. The judgment-debtor has come up in revision against the order of the executing Court to this Court.

(3) It is contended by the learned counsel for the petitioner that the amounts of D.A., C.C.A., H.R.A. and medical reimbursements are not liable to attachment under Section 60(1)(i) of the Code read with the notification issued by the State Government, dated 27th June, 1983.

(4) I have given my thoughtful consideration to the argument and find force in it. In order to determine the question, relevant portions of Section 60 of the Code and the Punjab Financial (4th Amendment) Rules, Volume II, 1983, as contained in the notification, dated 27th June, 1983, may be reproduced:—

“60(1) the following property is liable to attachment.....in execution of a decree :

Provided that the following particulars shall not be liable to such attachment.....namely:

- (i) salary to the extent of the first four hundred rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance :

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree ;

* * *

- (1) Any allowance forming part of the emoluments of any servant of the Government...which the appropriate Government may by notification in the

Official Gazette declare to be exempt from attachment and any subsistence grant or allowance made to any such servant while under suspension.

* * *

Explanation 2.—In clause (i) and (i-a), salary, means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (e) derived by a person from his employment whether on duty or on leave.

Explanation 3.—In clause (1) 'appropriate Government' means—

- (i) as respects any person in the service of the Central Government.....the Central Government,
- (ii) as respects any other servant of a Government or a servant of any other local authority, the State Government.

Note 2.—The following declarations have been issued by the Central Government and adopted by the State Government, under clause (e) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure:—

- (1) The following allowances payable to any public officer in the service of the Government, or any servant of a Railway, or of a Cantonment Authority or a Port Authority of a major port, shall be exempted from attachment by order of a court:—

* * *

- (iv) allowances granted as compensation for higher cost of living in localities considered by the Government to be expensive localities, including hill stations;
- (v) all house-rent allowances;
- (vi) dearness allowance or any other allowance granted to provide relief against the increased cost of living.

* * *

- (ix) all amounts paid by way of reimbursement of medical expenses.

Note 3.—Dearness Pay, which is really a part of the dearness allowance and is treated as pay for certain specific purposes only, is also exempt from attachment by order of a Court.”

(5) From a perusal of the above clauses, it is evident that in execution of a decree other than that of maintenance against an employee, a Court can attach 1/3rd of his salary after deducting Rs. 400 therefrom. The attachment can continue for recovering the amount of one decree for a maximum period of twenty-four months and thereafter it shall cease and the salary shall become exempt from attachment in execution of that decree. However, regarding the allowances payable to a Government servant as part of his emoluments the appropriate Governments have been authorised to exempt them from attachment. The Punjab Government adopted the notification of the Central Government exempting from attachment allowances granted as compensation for higher cost of living in expensive localities, House Rent Allowance, Dearness Allowance or any other allowance granted to provide relief against increased cost of living and all amounts paid by way of reimbursement of medical expenses. Therefore, the amounts of Rs. 208.30, Rs. 65.00, Rs. 150.00 and Rs. 10.00 per month are exempt from attachment. The learned counsel for the decree-holders has also fairly conceded that the said amounts are not liable to attachment. I decide accordingly.

(6) The learned counsel for the petitioner has next contended that the basic salary of the petitioner on 31st December, 1977, was Rs. 285 P.M. Besides, he was drawing Rs. 146 as D.A., Rs. 50 as Additional Relief, Rs. 168.20 as Additional D.A., Rs. 49.40 as C.C.A. and Rs. 49.40 as H.R.A. Thus, his total emoluments came to Rs. 748. The salaries were revised on 1st January, 1978, and a Fitment Table was prepared showing the existing emoluments and the pay admissible in the revised scale on 1st January, 1978, which is contained in the Punjab Government (Department of Finance) letter, dated 19th October, 1979, addressed to all the Heads of Departments and in the Fitment Table, amounts of Rs. 146 as D.A. Rs. 50 as Additional Relief, Rs. 108.10 and Rs. 72.20 as A.D.A. were merged with the salary of an employee drawing Rs. 285 as his basic salary was re-fixed at Rs. 661.30. He submits that the Dearness Allowance, Additional Relief and the Additional Dearness Allowance which were added to the basic salary, in order to re-fix the salary, are also exempt from attachment under Note 3 of the notification reproduced above.

(7) I regret my inability to accept the contention. In Note 3, Dearness Pay is exempted from attachment. The learned counsel has not been able to show that the D.A. etc. merged in the basic pay are called Dearness Pay. After the revision of the pay scales in 1978, the basic pay of a Government employee became total of the allowances plus the last drawn basic pay. The allowances so added lost their entity and became part and parcel of the revised basic pay. It is also relevant to point out that earlier the salary to the extent of Rs. 200 had been exempted from attachment under clause (1) but in view of the fact that Dearness Allowance etc. were merged with the salary, the exemption was enhanced to Rs. 400. Therefore, I am of the view that the basic salary of the petitioner would be taken at Rs. 825 P.M. on 1st April, 1982, and out of that, after deducting an amount of Rs. 400, 1/3rd of the balance amount will be liable to attachment in execution of the decree. The counsel for the petitioner referred to *Laxmi Narain v. Man Singh*, (1) and *Krishan Lal v. Chandi Parshad*, (2). Both the cases are on different facts and the ratio therein is not applicable to this case.

(8) Lastly, it is contended by the learned counsel for the petitioner that the attachment of the salary of the petitioner cannot continue for more than two years under proviso to clause (i) of sub-section (1) of Section 60 *ibid*.

(9) I find substance in this submission of the learned counsel. The proviso clearly lays down that the portion of the salary which is liable to attachment cannot continue under attachment for more than a total period of twenty-four months for payment of the same decree. Therefore, the attachment ceases after the expiry of the said period.

(10) For the aforesaid reasons, I partly accept the revision petition and remand the case to the executing Court to decide the matter afresh after taking into consideration the above observations. No costs.

N.K.S.

(1) (1972)74 P.L.R.D. 211.

(2) 1978 P.L.R. 632.