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Laxmi Naraln Vs. Man Singh

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Court : Delhi

Decided On : Mar-31-1972

Reported in : AIR1973Delhi34

Judge : B.C. Misra, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 60

Appeal No. : Ex. Second Appeal No. 3 of 1971, against order of O.N. Vohra, Addl. Dist. J., Delhi, D/-18.3.1971

Appellant : Laxmi Narain

Respondent : Man Singh

Advocate for Def. : S.K.Jain and ; R.L.Tandon, Standing Counsel for Central Govt.

Advocate for Pet/Ap. : S.L.Bhatia, Adv

Judgement :

1. This execution second appeal has been preferred by the decree holder against the appellate order of the Additional Districts Judge dated 18th March 1971 by which the learned Judge has affirmed the order the learned Judge dated 14th August 1970 upholding the objections of the judgment -debtor that the dearness pay allowed to him to the government was exempt for attachment in execution of

the decree. The appellant obtained a decree for sum of Rs.2,720/- besides costs against the judgment -debtor on 6th March 1969 and thereafter he took our execution and proceeded to attach the salary of the judgment debtor employed in the Electrical and Mechanical officer Workshop of the Government at a Safdarjang Airport New Delhi. His basic pay was Rs.233/- and dearness pay Rs.110/- and Rs.36/- a was dearness allowance. Besides he was getting city compensatory allowance of Rs. 27.44 and house rent allowance of Rs./51.45 and children allowance of Rs. 50/- making a total of Rs.507.89.

2. There is no dispute before me relating to the attachment of the basic pay in accordance with the provisions of Section 60 to the code of Civil Procedure. The dispute however centres round the fact whether dearness allowance of Rs.36/- and dearness pay of Rs.110/- per month which has been paid to the judgment debtor can be attached or were exempt from attachment under clause (1) of the proviso to Section 60 of the Code of Civil Procedure. Both the Court below found that they were exempt form attachment.

3. I have heard the learned counsel for the parties. I had called upon the respondent to produce the gazette notification declaring the exemption in dispute but on his failure to do so, I issued notice to Union of India to appear and contest or support the appeal. Mr. R. L. Tandon has appeared on behalf of the Union of India and has produced the relevant notification before me. The relevant provisions are contained in Section 60 of the Code of Civil Procedure where all saleable properties belonging to the judgment debtor and over which he has a disposing power are liable to attachment but a proviso has been inserted exempting certain properties from attachment and sale. Clause (1) of the said proviso reads as follows:--

'(1) Any allowance forming part of the emoluments of any servant of the government or of any servant of a railway company or local authority which the appropriate Government may by notification in the official Gazette declare to exempt form attachment and any subsistence grant of allowance made to any such servant while under suspension.'

On 25th March 1949 by Gazette of India Notification No. 57/4/49-Estss, the Central Government declared under clause (1) of the aforesaid provision of law that all allowances granted to provide relief against increase in cost of living will be exempted from attachment by order of the Court. This notification was slightly amended on 31st May, 1949 and it now reads as follows:-

'All allowances granted to provide relief against the increased cost of living'.

The entries in these exemptions were also added subsequently but they are not material for purposes of this case.

4. There is no doubt that dearness allowance was awarded by the Government to provide relief against the increased cost of living as is apparent from the use of the expression itself and it has not been seriously disputed that dearness allowance is covered by the entries themselves and is exempt from attachment. What has been agitated is that on or about 9th May, 1953, the Government decided to treat part of the dearness pay partakes of the characteristics of basic pay and is subject to attachment within the meaning of clause (i)read with Explanationn Ii, which Explanationn defines the word `salary' occurring in clauses (h) and (I) as meaning the total monthly emoluments excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.

5. The learned counsel for the Union of India has placed before me an office memorandum of the Government of India (Ministry of Finance) dated 5th July, 1954 where they decided the question that the dearness pay sanctioned on 9th May, 1953 under Memorandum No. F. 6 (5)-E. II/53 should be treated as pay for purposes of attachment by order of the Court and after holding consultation with the Ministry of Law, it was decided that the dearness pay should not be treated as part of the basic pay for purposes of attachment in execution of the decree. The matter has further been clarified by an office Memorandum No. F. 1 (34)-E-II(B)/68 dated 18th January, 1969. In this memorandum, the Ministry of Finance has observed that the question of treatment of a portion of dearness allowance as pay for certain purposes has been engaging the attention of the Government of India and the president has been pleased to direct under Articles 309 and 148(5) of the

Constitution that in modification of the existing rules and orders, the amount of dearness allowance indicated in the memorandum shall be treated as pay for the purposes and to the extent specified therein. Then scale is provided to indicate how much of the dearness allowance will be treated as dearness pay in respect of various categories of the employees. Paragraph 3 of the memorandum lays down that dearness pay shall count as `emoluments' for pension and gratuity while paragraph 6 further states that dearness pay would be treated as pay for the purposes specified therein like house rent allowance or non-practicing allowance. In this memorandum, paragraph 14 expressly specifies that except as specified in these orders, dearness pay will not be treated as pay for any other purpose, for example for fixation of pay, drawal of increments or for fixation of deputation allowance, nor will it be taken into account for the drawal of dearness allowance and that it would not also be shown as a separate element either in the pay bills or the service records.

6. It is, thereforee, clear that it is dearness allowance which was granted by the Government to provide relief against the increased cost of living and part of the same allowance has been treated as dearness pay for some specified purposes, but it does not wholly constitute basic pay as is mentioned in the office memorandum. There is Note 3 subscribed to Rule 225 of the Treasury Rules of the Central Government. Although the rules issued under Section 151 of the Government of India Act, 1935 have statutory force, the note is not part of the statutory rules; still the note correctly clarified the legal position that dearness pay is really part of the dearness allowance and is treated as pay only for certain specified purposes and is as such exempt from attachment by order of the Court in execution of decree.

7. Accordingly, I am of the view that dearness pay received by the judgment debtor is exempt from attachment under Entry 6 of the notification of the Government issued under clause(1) of the proviso to Section 60 of the Code of Civil procedure and the orders of the Courts below are, thereforee, correct and are affirmed. The appeal is consequently dismissed but there will no order as to costs of this appeal.

8. Appeal dismissed.

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