SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

K. Murugesan Vs. E. Ulaganathan and anr.

K. Murugesan Vs. E. Ulaganathan and anr.

SooperKanoon Citation : sooperkanoon.com/835067

Court : Chennai

Decided On : Apr-01-2009

Reported in : AIR2009Mad169

Judge : S. Palanivelu, J.

Acts : Provident Funds Act, 1925 - Sections 3 and 4; Code of Civil Procedure (CPC) , 1908 - Sections 151 60 and 60(1) - Order 38, Rules 5 and 11A; Code of Civil Procedure (CPC) (Amendment) Act, 1976

Appeal No. : C.R.P. No. 159 of 2009

Appellant : K. Murugesan

Respondent : E. Ulaganathan and anr.

Advocate for Def. : No appearnace

Advocate for Pet/Ap. : P. Valliappan, Adv.

Disposition : Petition allowed

Judgement :
ORDER

S. Palanivelu, J.

1. No appearance for the respondents. Hence, the matter is taken up for final hearing.

2. The petitioner is the seventh defendant in O.S. No. 154 of 2008 on the file of the District Munsif Court, Mettur. The first respondent has filed a suit on pro-note for a sum of Rs. 94,750/-. Along with the suit, he also filed an application under Order 38 Rule 5 read with Section 151 Civil Procedure Code, for an order of attachment before judgment of the retiral benefits of this petitioner to the tune of Rs. 1,00.000/-.

3. At the outset, the Court below passed an order, directing notice to furnish security by this petitioner. This petitioner remained absent and was set ex parte by the Court below on 16.06.2008. On 23.06.2008, the trial Court passed an order, directing attachment of the retirement benefits of this petitioner by 25.07.2008 and the same was also effected. On 25.07.2008, the attachment was made absolute and the Interlocutory Application was closed. It is this order being challenged before this Court by the petitioner, by terming it to be unlawful.

4. Mr. Valliappan, learned Counsel for the petitioner submitted that the petitioner retired on superannuation on 28.02.2009 and that, as stated in the affidavit filed by the first respondent that the petitioner retired on 30.06.2008. is incorrect.

5. The learned Counsel for the petitioner would strenuously contend that the Court below did not follow the provisions contemplated in Section 60(1)(g) of CPC, which exempts, stipends, 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 pensions. It is his further contention that the claim of the petitioner is safeguarded by the decisions of the Hon'ble Supreme Court to the effect that the retiral benefits payable to an employee could not be attached even it reaches the hands of such employee, since it would not lose the character of the amount, as described in Section 60(1)(g) of CPC. He garnered support from a decision of this Court in Lakshminarayanan, I v. A. Veeraraghavalu reported in 1990 (I) Mad LW 135. wherein, it is observed as follows:

Retirement benefits fall under the proviso to Section 60(1). C.P.C., which enumerates the properties which cannot be attached. Order 38, Rule 11-A was introduced in 1976, by an amendment of C.P.C., Section 60, C.P.C. will certainly be applicable to attachment before judgment, i.e., even though the suit has not yet resulted in a 'decree' as such.

6. Learned Counsel for the petitioner placed much reliance on a recent decision of the Hon'ble Supreme Court in Radhey Shyam Gupta v. Punjab National Bank and Anr. reported in : 2009 SAR (Civil) 119 : AIR 2009 SC 930., wherein, Their Lordships were pleased to hold that under Section 60(1)(g) CPC, the attachment of retiral benefits, such as, pension and gratuity is unsustainable and even if such benefits were received by the retired employee in cash, it would not lose their character and will continue to be covered by proviso (g) to Section 60(1) of the Code. The Supreme Court also refers to various decisions of the Court on this point and formulated the dictim as follows:

17. However, in all fairness, Ms. Shobha also cited the decision of this Court in Union of India v. Jyoti Chit Fund and Finance and Ors. : (1976) 3 SCC 607 : AIR 1976 SC 1163, where while dealing with the provisions of Sections 3 and 4 of the Provident Funds Act, 1925, prohibiting attachment of sums held by the Government, as well as proviso (g) to Section 60(1) of the Code, this Court held that till such time as amounts payable by way of provident fund, compulsory deposits and pensionary, benefits did not reach the hands of the employee they retained their character as such and could not, therefore, be attached. However, once the amounts were received by the employee they ceased to retain their original character, and, therefore, capable of being attached. Ms. Shobha urged that the aforesaid decision had been rendered long before the other decisions cited by her and the subsequent decisions would prevail over the earlier decision..

25. ...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 the Jyoti Chit Fund and Finance case (supra), where a contrary view was taken, the consistent view taken thereafter support 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.

7. The settled law on this subject is that retiral benefits are not liable for attachment not only while they were with the employer concerned, but also when it passes to the hands of the employee after retirement, since such benefits will not lose their character as retiral benefits entitling them to be clothed with exemption under Section 60(1)(g) of CPC.

8. Following the ratio laid down by the Supreme Court, it is held that the attachment of the retiral benefits made by the Court below is not legally sustainable, the order of attachment has to be set aside and the attachment be lifted. In such view of this matter, the impugned order dated 25-07-2008 is set aside and the attachment made, pursuant to the abovesaid order, is lifted. The second respondent-Garnishee is directed to disburse the amounts as per the rules.

9. In the result, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is also closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com