Daiichi Sankyo Company, Limited vs Malvinder Mohan Singh And Others on 29 March, 2019

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Author: Rajiv Shakdher

Bench: Rajiv Shakdher

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ I.A. No. 11934/2018 inOMP (EFA) (COMM) No. 6 /2016
Reserved on: 30.10.2018
Date of decision:29.03.2019

DAIICHI SANKYO COMPANY, LIMITED
.....Decree Holder

Through Mr. Arvind K. Nigam & Mr. Arun Kathpalia, Sr. Advocates with Mr. Amit Kumar Mishra, Ms. Kanika Singhal, Mr. Mohit Singh, Ms. Samridhi Hota, Ms. Kazmi, Mr. Rohan Jaitley, Mr. Aditya Shankar, Ms. Bani Brar, Mr. Mikhil Sharda, Mr. Kunal Chaterji, and Mr. Mehtaab Singh Sandhu, Advocates.

versus

MALVINDER MOHAN SINGH AND OTHERS
..... Judgment Debtors

Through Mr. C.S. Vaidyanathan & Mr. Sanjay Jai, Sr. Advocates with Mr. Gyanendra Kumar, Ms. Shikha Tandon, Mr. Abhijit Mittal, Mr. Robin Grover, and Ms. Rhea Verma, Advocates for Fortis Healthcare Limited.
Mr. Akhil Sibal with Ms. Vijayalakshmi Menon, Ms. Ekta Kapil, Ms. Neeharika Aggarwal, Mr. Shobhit Ahuja, Mr. Pradeep Chhindra and Ms. Nitya Gupta, Advocates for judgment debtor Nos. 1 to 4 and 13.
Mr. Sandeep Bajaj, Mr. Sayib Qureshi, and Mr. Devansh Jain, Advocates for Luxury Farms Private Limited.
Mr. A.K. Vali, Mr. Tuhin and Mr. Bhaskar Vali, Advocates for judgment debtor Nos. 6 to 8.

Mr. Akhil Sibal, Sr. Advocate with Mr. Varun

Mishra, Advocate for judgment debtor Nos. 14 to 19.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Prefatory Facts:

1. The instant application has been moved by judgment debtor No. 1, i.e., Malvinder Mohan Singh. This application raises an interesting issue, which is, as to whether amounts received by judgment debtor No. 1 on a quarterly basis purportedly in the form of pension are exempt from attachment. More specifically, whether these funds fall within the ambit of Clause (g) of the proviso appended to Subsection (1) of Section 60 of the Code of Civil Procedure, 1908 (hereafter referred to as „Code). 2 Insofar as this aspect of the matter is concerned, it would be important to note the following short facts:-

2.1 The award dated 29 April 2016 rendered in this case is a foreign award qua which the judgment debtors had filed a petition in the form of objections under Section 48 of the Arbitration and Conciliation Act, 1996 (in short „1996 Act). Inter alia, the petition/objections preferred by judgment debtor No.1 qua the Award was dismissed by a Single Judge of this Court vide judgment dated on 31 January 2018. The matter was carried by the judgment debtors to the Supreme Court which met the same fate. The Special Leave Petition filed was dismissed vide order dated 16 February 2018.

2.2 The decree holder seeks to attach the amounts which judgment debtor No. 1 is said to receive, on a quarterly basis, in bank account(s) maintained by him, towards satisfaction of the Award dated 29 April 2016 which has, in the interregnum, on account of events adverted to hereinabove, morphed into a decree. Judgment debtor No. 1, on the other hand, seeks to resist the attachment and in this behalf adverts to the following facts and circumstances.

(i) That he was employed as Manager (Financial Services) with Ranbaxy Laboratories Limited (in short „RLL) on 22 May 1998.

(ii) That he resigned as the Managing Director and CEO of RLL in May 2009.

(iii) That he became entitled to retiral benefits as per the policy of RLL framed in that behalf and by virtue of an Employment Agreement executed between him and RLL on 11 June 2008.

(iv) That the decree holder had also in terms of the policy paid monies towards pension after it took over the management of RLL.

(v) That after the merger of RLL, in 2015, with an entity by the name Sun Pharmaceuticals Industries Limited (SPIL), the same arrangement continued vis-à-vis him.

3. In the context of the aforesaid, judgment debtor No. 1 accepts that he receives per quarter in the concerned bank account(s) sum equivalent to approximately INR 41,05,498/-.

4. Given this background, judgment debtor No. 1 claims that he ought to be granted by this Court permission to operate the concerned bank account(s) so that he can take recourse to the money in order to provide for himself, judgment debtor No. 6, their families, including their ailing mother.

4.1 It is emphasized by judgment debtor No. 1 that judgment debtor No. 6 does not have any source of income.

5. It may be relevant to note that judgment debtor No. 1 and 6 (i.e. Malvinder Mohan Singh and Shivinder Mohan Singh) are siblings and their mother (i.e. Ms. Nimi Singh) is arrayed as judgment debtor No. 13 in the execution proceedings.

6. The record shows that upon examination of judgment debtor No. 1 and 6, a direction was issued on 10 August 2018 that they would not operate the bank accounts which were referred to by them in their statements recorded, in Court, on that very date. It is this direction which has resulted in the instant application being moved by judgment debtor No. 1.

7. Notice in this application was issued on 5 September 2018, whereupon the decree holder has filed its reply. The decree holder in his reply, inter alia, takes the stand that the assertion by judgment debtor No. 1 that he is required to look after the needs of judgment debtor No. 6 and his family members, including his mother for the reason that they were dependent on him, was false.

7.1 The decree holder emphasizes the fact that the claim of judgment debtor No. 1 that his family members were dependant on him was false for the following reasons: first, in the affidavit dated 21 March 2018 an averment had been made that the assets of judgment debtor Nos. 2 and 7, i.e., Malvinder Mohan Singh HUF and Shivinder Mohan Singh HUF, had been transferred to minors, who were not party to the execution proceedings; second, there was enough and more material available in the news reports which was indicative of the fact that judgment debtor Nos. 1 and 6 were at loggerheads and that the latter had taken out proceedings against judgment debtor No. 1 before the National Company Law Tribunal (NCLT) alleging operation and mismanagement of the affairs of judgment debtor No. 19 (i.e. RHC Holdings Private Limited); third, affidavit dated 5 September 2018 filed by judgment debtor No. 1 demonstrated his ability to raise funds as he had averred therein that he could restitute SGD 3.5 million within four weeks by approaching family/friends; fourth, judgment debtor Nos. 1, 4, 6 and 8 have assets outside the shores of India; and lastly, judgment debtor No. 13 has, in fact, advanced a loan in the sum of INR 900 million to judgment debtor No. 1 and 6.

7.2 The sum and substance of the decree holder s stand is that the plea taken by judgment debtor No. 1 is yet another device employed by him to keep his assets outside the reach of this Court and as a result impede the satisfaction of the subject decree.

8. In the rejoinder filed on behalf of the judgment debtor No. 1, as expected, averments made in the application are reiterated and those made in the reply by the decree holder to the extent they are contrary to the assertions made in the application are refuted. 8.1 It is, in particular, asserted that judgment debtor No. 6 had withdrawn proceedings instituted by him in the NCLT. In this behalf, the judgment debtor No. 1 has placed reliance on newspaper articles. Furthermore, judgment debtor No. 1 has asserted that while he had indicated that he would be able to restitute SGD 3.5 million by taking a loan from his family and friends, this by itself would not vest in the decree holder the right to attach the pension received by him in view of the legislative bar contained in Clause (g) of the proviso appended to Subsection (1) of Section 60 of the Code.

8.2 Judgment debtor No. 1, as expected, has also denied that there is any attempt by him to siphon funds or as alleged use the instant application to have the funds received as a pension by him kept outside the reach of the decree holder.

Submissions of Counsel:

9 In support of the application, arguments were advanced by Mr. Akhil Sibal, Sr. Advocate, while those on behalf of the decree holder were advanced by Mr. Arvind Nigam and Mr. Arvind P. Datar, Sr. Advocates.

10 Mr. Sibal argued that Clause (g) of the proviso appended to Subsection (1) of Section 60 listed out properties which were exempt from attachment and sale in execution of a decree. Clause (g), according to him, which adverts to stipends and gratuities exempted from attachment not only payments of such nature received by Government pensioners but also payments of like nature which were received by employees of a local authority or any other employer. 10.1 The contention was that the expression "stipend" would include pension, and in particular, pension paid to employees of private employers.

10.2 In line with this contention, Mr. Sibal submitted that the reliance placed on behalf of the decree holder on the doctrine of ejusdem generis and noscitur a sociis was erroneous. These doctrines, according to Mr. Sibal, could not be brought into play to construe the expression „any other employer found incorporated in Clause (g) of the proviso appended to Subsection (1) of Section 60.

10.3 In support of his submission, learned senior counsel placed reliance on the judgment of the Kerala High Court in J.J. Chrisostom(alias) Christotel vs. Federal Bank Ltd., 1992 2LLN 553 10.4 Furthermore, Mr. Sibal submitted that if the expression "any other employer" were to exclude private employers, then the provision would be susceptible to falling foul of Article 14 of the Constitution. 10.5 In other words, according to the learned counsel, there was no good reason to exclude private employees from the benefit of exemption from attachment as provided for in Clause (g) of the proviso to Subsection(1) of Section 60 of the Code. Insofar as the retiral benefits are

concerned, Mr. Sibal submitted that both private employees and Government employees should be held to be at par.

11. On the other hand, Mr. Nigam contended that the expression "pension" had not been defined under any statute and, therefore, the Court would have to rely upon judge-made-law on the subject. In support of this plea, Mr. Nigam thus relied upon the Supreme Court judgment in Pepsu Road Transport Corporation, Patiala versus Mangal Singh and Others, (2011) 11 SCC 702.

11.1 In particular, learned counsel relied upon the expression "pension" as defined in Pepsu Road Transport Corporation s case which described the term as: "a social security plan consistent with the socio-economic requirements of the Constitution when the employer is State". Based upon this, Mr. Nigam contended that the only form of pension which gets the protection of Clause (g) of the proviso appended to Subsection (1) of Section 60 of the Code is that pension, which is payable by the State to its employees. It is in this context that Mr. Nigam relied upon, as noticed hereinabove, on the doctrine of ejusdem generis and noscitur a sociis.

11.2 Elaborating on this submission, learned counsel submitted that the expression "any other employer" had to take colour from the accompanying words and, therefore, could only mean State as defined in Article 12 of the Constitution.

11.3 The learned senior counsel went on to submit that the purpose of incorporating the expression "any other employer" in Clause (g) of the proviso appended to Subsection (1) of Section 60 was to broaden the narrower concept of the State even while keeping the private employers outside its ambit. To buttress his submission, Mr. Nigam drew my attention to Section 11 of the Pensions Act, 1871 (in short „Pensions Act), which barred the attachment of only those pensions which were received by Government employees.

11.4 Furthermore, it was contended that amounts such as provident fund, compulsory deposits, and pensionary benefits lost their original character once they were received by the employee. In other words, once funds of such nature are in the hands of the employees, according to Mr. Nigam, they were capable of being attached.

11.5 It was also the contention of Mr. Nigam that before a person seeks to take advantage of the protection granted by Clause (g) of the proviso appended to Subsection (1) of Section 60, he must establish that the funds received by him had the attributes of pension. Learned counsel in this behalf drew my attention to the conditions stipulated in Clause 2.1 of the relevant pension policy relied upon by judgment debtor No.1. 11.6 Based on the provisions of Clause 2.1, it was contended that retiral benefits, including pension, was available to management employees, who retired upon completion of ten (10) years or more of continuous service or who resigned from the service of the company after completing twenty (20) years or more of continuous service.

11.7 According to Mr. Nigam, since judgment debtor No. 1, admittedly, had joined RLL in 1998 and resigned in May 2009, he did not fulfil the eligibility criteria for receipt of a pension under the pension policy placed on record by him.

11.8 Learned counsel stressed that judgment debtor No. 1, as would be evident from the dates mentioned above, had resigned from service after completing eleven (11) years of service as opposed to twenty (20) years of continuous service.

11.9 Likewise, it was contended that the reliance placed by judgment debtor No. 1 on para 7.1(b) of the Employment Agreement of June 2008 was also misplaced. Learned counsel submitted that necessary resolutions or necessary agreements, which were required to be executed to give effect to Para 7.1(b) of the Employment Agreement had not been placed on record. Consequently, according to Mr. Nigam, judgment debtor No. 1 had failed to establish that the monies received by him were pension as per the relevant policy, i.e., Personnel Policy No.32 B framed in that behalf.

12. In sum, Mr. Nigam submitted that the present application was not supported by relevant material and even otherwise did not fall within the ambit of Clause (g) of the proviso to Subsection (1) of Section 60 of the Code and hence was not a property, which was exempted from attachment and sale in execution proceedings.

Analysis and Reasons:

13. I have heard learned counsel for the parties and perused the record. Before I proceed further, it may be pertinent to extract the relevant provisions of the Code as under:-

> "Section 60 - Property liable to attachment and sale in execution of decree (1)The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:
>
> Provided that the following particulars shall not be liable to such attachment or sale, namely:
>
> (a) XXXXX
> (b) XXXXX
> (c) XXXXX
> (d) XXXXX
> (e) XXXXX
> (f) XXXXX
> (g) 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 pensions;

(h) XXXXX
(i) XXXXX

> 14. A plain reading of Section 60(1) of the Code would show that it details out various forms of property owned by a judgment debtor which can be attached and sold in execution of a decree. However, the ones which are exempt from attachment are listed out in Clauses (a) to (p).

Clause (g) of the very proviso alludes one such set of properties i.e. stipend and gratuity.

14.1 The protection from attachment and sale in execution of a decree qua stipend and gratuity payable to the following recipients is, thus, exempt:

(i) Government pensioners;
(ii) a local authority employees;
(iii) and employees of any other employer.

14.2 The category of employees referred to in sub-point (ii) and (iii) above came to be inserted in the Code upon enactment of Code of Civil Procedure (Amendment) Act, 1976. The amendment was brought about pursuant to recommendations made by the Law Commission of India in its 27th Report and the Report of Joint Committee qua the Code of Civil Procedure (Amendment) Bill, 1974.

14.3 Besides this, what is protected from attachment and sale in execution of a decree are also the following: monies payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government and political pension. For the moment, one is not concerned with this part of the provision.

14.4 Therefore, what is required to be discerned is whether stipend (which as per the dictionary meaning includes a fixed periodical payment of any kind, such as pay, pension or allowance) paid to an employee by a private employer would be protected from attachment in execution proceedings. The important thing to be noted is that the expression "any other employer" is preceded by the preposition "of". The preposition "of" is a word which connects or indicates a point of reference. Therefore, one way of construing the provision would be to hold that the preceding expressions provide a connection or a point of reference to the expression "any other employer". The preceding expressions point to recipients such as Government pensioner or of a local authority. If one were to go by this rationale, then, the expression "any other employer"

> could only mean an employer whose employees are beneficiaries of pension schemes which are broadly in line with those available to employees of the Government or local authority and not that the recipient should be an employee of the State or its instrumentality.

14.5 The narrower meaning of the expression "any other authority"

would run counter to the purpose of the amendment, which was to cast the net of protection and thus include a wider class of employees. The exemption from attachment granted under Section 11 of the Pensions Act to the pension granted by Government for political consideration or otherwise as elucidated in the provision would be the very reason why I would not restrict the protection to the employees of the State or its instrumentalities.

14.6 The legislature is deemed to have knowledge of Section 11 of the Pensions Act and thus despite such a situation obtaining has chosen to use a very wide or one should say overarching expression, which is, "any other employer". This is another reason why I would give a wider meaning to the expression "any other employer". The reason is this, in today s world the footprint of the State as an employer has shrunk and my guess is that it will shrink further in days to come. The pension is a kind of social security measure made available to employees to provide for their personal needs and those of their kith and kin in their twilight years. It would be, to my mind, completely inequitable to restrict the protection from attachment granted under Clause (g) of the proviso appended to Subsection (1) of Section 60 of the Code only to employees of the State and its instrumentalities. A pension is a recompense given, albeit, on a periodical basis for past services rendered by employees. To answer Mr. Nigam s submission that the doctrine of noscitur a sociis and/or ejusdem generis should be applied, I must state that these are at best rules of construction which have no application where meaning of general words in this case "of any other employer" preceded by specific words and/or class/category is clear. The attempt of the legislature with the introduction of the aforesaid amendment was to widen the net of employees to whom protection from attachment was provided under clause (g) of the proviso to Section 60(1). If, however, one were to assume that there was ambiguity in the expression "of any other employer" and, as argued by Mr. Nigam, it should take colour from the company of the expressions that precede it and/or be restricted to the class of employers such as the Government or instrumentalities of the State, I would take recourse to the doctrine of dynamic interpretation or updating construction1. This doctrine allows the Court to infuse fresh insight into words and expressions used in the Statute bearing in mind the Rama Pandey vs. Union of India & Ors., (2015) 221 DLT 756.

> "…. The principle of updating resembles another principle which the courts have referred to as the "dynamic processing of an enactment". The former is described in Bennion on Statutory Interpretation at page 890 in the following manner:-
>
> "..An updating construction of an enactment may be defined as a construction which takes account of relevant changes which have occurred since the enactment was originally framed but does not alter the meaning of its wording in ways which do not fall within the principles originally envisaged by that wording.
>
> Updating construction resembles so-called dynamic interpretation, but insists that the updating is structured rather than at large. This structuring is directed to ascertaining the legal meaning of the enactment at the time with respect to which it falls to be applied. The structuring is framed by reference to specific factors developed by the courts which are related to changes which have occurred (1) in the mischief to which the enactment is directed, (2) in the surrounding law, (3) in social

conditions, (4) in technology and medical science, or (5) in the meaning of words..."

changes brought about due to science, technology and societal needs without tearing asunder the fabric into which the word or expression is woven in. I have no manner of doubt, if I were to apply this principle that the protection from attachment would have to be extended to employees of private employers as well provided, as alluded to above, the pension scheme in force is broadly aligned to pension schemes applicable to employees of the Government or those of local authority. In other words, the pension scheme of private employers should be such which are generic, ubiquitous, and non-discriminatory. The pension schemes of private employers which are and/or are designed to protect from attachment money received by a single employee or a clutch of employees based no perceivable rationale cannot get protection from attachment, as that, in my view, would defeat the very purpose and object behind the 1976 Amendment.

15. In the light of the aforesaid discussion, let me examine the plea advanced by Mr. Sibal that the money received by judgment debtor No. 1 are in the nature of pension and, therefore, should be exempted from attachment.

16. The tenability of the plea would have to be examined in the backdrop of the eligibility criteria provided in Clause 2.1 of Personnel Policy No.32B relied upon by judgment debtor No.1:-

> "2.1 For Retiral Benefits Applicable to all management employees who retire upon completion of 10 (ten) or more years of continuous service or resign from the services of the company after completing 20 (twenty) or more years of continuous service."

16.1 Concededly, judgment debtor No. 1 does not fulfil the eligibility criteria as he resigned from service of RLL prior to completion of twenty (20) years or more years of continuous service. To plug this crucial gap, judgment debtor No. 1 seeks to rely upon his Employment Agreement of June 2008, which provides for the following:-

> "7.1 Obligations Upon Termination.
>
> (a) xxxxxxx
>
> (b) Retirals Benefit. The Employee has completed ten (10) years of service with the Company. Notwithstanding anything contained in the personnel policy no.32-B or in any other agreement entered into, or policy issued by, the Company, the benefit of the personnel policy no. 32-B shall be available to the Employee and the Company undertakes to pass the necessary resolutions, execute necessary agreements and take requisite actions as may be required to give effect to this Section 7.1 (b)."

(emphasis is mine) 16.2 A bare perusal of Para 7.1 (b) of the Employment Agreement would show that the employer has introduced a special dispensation for judgment debtor No. 1 in order to enable him to avoid the rigours of the eligibility criteria provided in clause 2.1 of the pension policy subject, though, to the fulfillment of certain prerequisites.

16.3 In other words, RLL at the relevant point in time (i.e. in 2008) entered into an Employment Agreement with judgment debtor No. 1 which, inter alia, extended the benefit of pension to him notwithstanding anything to the contrary contained in the Personnel Policy No.32B. This, though, as indicated above, was subject to the employer RLL passing necessary resolutions, executing relevant agreements, and taking requisite actions as may be required to give effect to this provision.

16.4 The net effect was that even though judgment debtor No. 1 resigned from service of RLL prior to completion of twenty (20) years or more of continuous service, he could claim, based on the Employment Agreement of June 2008 that the monies received by him had the attributes of a pension.

16.5 In this case, there is no dispute that the necessary resolutions, agreements etcetera have not been placed on record which, perhaps, would demonstrate for whatever it was worth, that what was provided in para 7.1(b) of the Employment Agreement entered into between judgment debtor No. 1 and RLL was, ultimately, given effect to.

16.6 In order to get over this impediment, Mr. Sibal argued that it was no part of the duty of judgment debtor No. 1 to demonstrate that the necessary resolutions and steps had been taken by RLL. The contention was that judgment debtor No. 1 was an employee of RLL at the relevant point in time and, therefore, could safely assume that the requisite action had been taken by RLL to give effect to the provisions of Para 7.1 (b) of the Employment Agreement. In support of this plea, Mr. Sibal sought to rely upon the doctrine of indoor management.

16.7 This submission advanced on behalf of the judgment debtor No. 1 does not impress me for two reasons: First, judgment debtor No. 1 was not an ordinary employee in RLL but the MD and CEO at the point in time when he resigned from RLL. Therefore, his knowledge of facts concerning aspects pertaining to pension (which, even otherwise impacted him personally) would be the knowledge of the employer i.e., RLL.

16.8 Judgment debtor No. 1 makes no assertion in the application or in the rejoinder that there was follow up by RLL to give effect to the provisions of Para 7.1 (b) of the Employment Agreement. The onus may, perhaps, have shifted to the non-applicant if such an averment was made in pleadings by judgment debtor No. 1. While I am on this point, I may indicate that the doctrine of indoor management, which is a principle of law enunciated in Royal British Bank versus Turquand, (1855) 5 E&B 248, has its exceptions. This doctrine, which was devised in the nineteenth century under common law, was established to provide protection to those persons who dealt with a company in good faith and where the act or the transaction in issue was ultra vires and/or beyond the powers of the company. However, the protection devised by law has several exceptions, including a situation where a person who claims protection under the doctrine of indoor management is one who has knowledge of the fact that there has been a failure on the part of the company to adhere to the conditions and prescribed procedure for effectuating the transaction in issue. Ordinarily, insofar as the company is concerned, conditions and procedures which it has to follow are prescribed either in the Memorandum or Articles of Association or are reflected in the resolutions passed by its Board of Directors. Persons, who are part of the management of the company, that is, those who sit on the

Board of Directors or run and manage the affairs of the company de jure or de facto are in law considered as insiders and, therefore, do not get the protection of the doctrine of indoor management unless the person concerned can show that he had no involvement with the transaction in issue or had no reasonable means of making an enquiry or knowing that prescribed conditions are met (See: Moris vs. Kanssen and Others, [1946] AC 459). In this case, as noticed above, the judgment debtor was an insider and part of the management of the RLL at the relevant point of time and, therefore, is presumed to have knowledge as to whether or not requisite steps were taken post the execution of the employment agreement between himself and RLL. Therefore, the submission of Mr. Sibal that the failure by judgment debtor No. 1 to place the requisite resolutions and documents on record cannot work to his disadvantage, is a submission, I am unable to accept.

16.9 Second, the monies received by judgment debtor No. 1 do not have the attributes of pension in this particular case; an aspect which I have alluded to hereinabove. The expression "pension" as ordinarily understood is in the nature of a periodical payment received by an employee for past services rendered by him. These payments are made at regular intervals to enable the recipient to maintain himself and his near and dear ones. Therefore, while the subject pension scheme applied to a class of employees of RLL, the 2008 Employment Agreement makes an inexplicable exception only for judgment debtor No. 1. There is nothing on record to show that other employees who fell in the same class as judgment debtor No. 1 i.e. had resigned or intended to resign before completion of twenty (20) years or more of continuous service, were also entitled to the benefit of the Pension Scheme. There is no averment to this effect in the application filed by judgment debtor No.1. Furthermore, in my opinion, Explanation 1 to 60 (i) of the Code only fortifies the view, which is expressed above. The Explanation, inter alia, states that monies payable in relation to matters mentioned in clause (g), amongst others, are exempt from attachment or sale whether before or after they are actually payable. In other words, once monies referred to in clause (g) are paid i.e. received by an employee, they are outside the realm of the protection granted in clause (g) of the proviso appended to sub-section (1) of Section 60 of the Code.

17. Therefore, to my mind, the amount received by judgment debtor No. 1 does not have the attributes of a pension. The arrangement entered into between judgment debtor No. 1 and his then-employer i.e., RLL, which was thereafter honoured by the decree holder and SPIL was at best a general inter se arrangement with respect to emoluments payable to judgment debtor No. 1 by his employer.

17.1 Clause (g) of the proviso appended to Subsection (1) of Section 60 of the Code does not protect a debt of this nature owed to a judgment debtor from attachment and sale in execution proceedings. A careful perusal of Subsection (1) of Section 60 would show that generally properties owned by a judgment debtor (including "debts" owed to judgment debtor) are liable for attachment. The exceptions to the general rule are carved out in clauses adverted to in the proviso to Subsection (1) of Section 60, one of which is, Clause (g). Being an exemption, it would have to be construed in a manner which aligns with the notion and the attributes of pension whether receivable by an employee of the Government or a local authority. The money received by judgment debtor No.1, in my view, does not have, in my opinion, the attributes of pension. The arrangement of June 2008 is

tailor-made for judgment debtor No.1--which makes an exception in his favour without a disclosed rationale. The lack of ubiquity rails against the notion of the receipt being in the nature of pension.

18. There is also merit in the submission made by Mr. Nigam that the exemption from attachment and sale in the execution proceeding as contemplated in Clause (g) of the proviso to Subsection (1) of Section 60 is available only till such time money is received by judgment debtor No.

1. The logic and rationale of this argument can best be explained by alluding to the illustration given by the Division Bench of the Sind Chief Court in the matter of Hassomal Sangumal Vs. Diaromal Laloomal, AIR 1942 Sind 19, when examining whether commuted pension in the hands of the judgment debtor would be exempt from attachment:

" 2. In appeal however before us, it is argued that the lower Court had wrongly taken into consideration, in deciding whether this judgment-debtor had the means to satisfy the decree against him a sum of Rs. 3000, which he received in commutation of his pension, and it was argued before us that under Section 60 of the CPC, as a pension was exempt from attachment, so commutation of that pension was also exempt from attachment.

3. Reliance was placed upon a case reported in (1940) M.L.J. 782,1 in which the Court interpreting Section 11 of the Pensions Act, was of the opinion that not only the pension but any portion of it which is commuted, came within the provisions of that section. But that case did not decide that once a pension has been commuted and the money paid over to the pensioner, the exemption from attachment still continued.

4. Mr. Kimatrai argued before us, and we think not seriously, that the pension of a pensioner is, under Section 60 of the CPC, forever [sic] exempt from attachment. So that if, for instance, a pensioner has Rs. 500 pension a month, he can live for a year on credit, have a substantial sum of say Rs. 6000, to his credit in his account in the bank, and say then to the angry tradesmen who demand the payment of their grocery and other bills that he was very sorry; it is true he had Rs. 6000 in the bank, but that was exempt from attachment and he could not pay his bills. It is true, as Mr. Kimatrai argues, that in Section 11 of the Pensions Act, the words used are "money due or to become due," but we think those words by necessary implication mean, the money that has not yet been paid; it has not been received by the pensioner, and, indeed, this Madras case on which Mr. Kimatrai relies, the money was attached before it had been actually received by the pensioner. It is true the only act to be done by the pensioner was to take delivery of the payment order and cash it at the local treasury; but a miss is as good as a mile, and the pensioner had not actually received his pension when it was attached or attempted to be attached.

5. Mr. Kimatrai merely referred to Section 11 of the Pensions Act, by way of analogy. He relied upon cl. (g) of the proviso to Section 60 of the CPC, which prohibits the attachment of stipends and gratuities allowed to pensioners of Government. Firstly, we cannot say that commutation of a pension comes under the heading either of stipends or gratuities, but even if it were, we do not think that the proviso to Section 60 of the CPC, was intended to apply to money after it had passed into the pocket of the pensioner. It has then ceased to be his stipend or gratuity but it is his money to be

used by him to provide himself and his family with the necessities of life, and, presumably, if he was so foolish, for other purposes not so commendable."

(emphasis is mine) 18.1 (Also See UOI vs. Jyoti Chit Fund & Finance and Others, (1976) 3 SCC 607 on page 611, Paragraph 12)

19. Thus, in any case, monies which already stand credited, on this score, in the concerned bank account(s) of judgment debtor No. 1, to my mind, are not free from attachment.

20. Furthermore, in my opinion, Explanation 1 to Section 60 (1) of the Code only fortifies the view, which is expressed above. The Explanation 1, inter alia, states that monies payable in relation to matters mentioned in Clause (g), amongst others, are exempt from attachment or sale whether before or after they are actually payable. In other words, once the pension is paid i.e. received by an employee, they are outside the realm of the protection granted under Clause (g) of the proviso appended to Subsection (1) of Section 60 of the Code.

21. Therefore, having regard to the foregoing discussion, I am not inclined to accept the plea advanced on behalf of the judgment debtor No.

1.

22. The prayer made in the application is, accordingly, rejected.

(RAJIV SHAKDHER) JUDGE MARCH 29, 2019/VKR/A