



2025:DHC:4048



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 13th February 2025

Decided on: 20th May, 2025

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CM(M) 623/2022 & CM APPL. 29452/2022 STAY

**BUREAU OF OUTREACH AND COMMUNICATIONS AND
DD M/O INFORMATION AND BROADCASTING**

.....Petitioner

Through: Mr. D.S. Mehandru, Adv.

versus

CANARA BANK

.....Respondent

Through: Mr. Arjun Malik, Adv.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This is a petition under Article 227 of the Constitution of India challenging the impugned order dated 04.12.2019, passed by the learned Civil Judge-09, Central District, Tis Hazari Court, Delhi in Execution Petition No. 95677/2016, whereby the Executing Court issued directions for release of the death gratuity amount of Rs. 2,39,762 /- to the respondent.

2. The facts in brief are that respondent filed a suit for recovery of amount of term loan which was taken by late Sh Pranab Kumar



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Chaudhary against four defendants.

3. Vide judgment dated 18.04.2007, the learned Trial Court passed the *ex parte* decree in the sum of Rs 89,689/- alongwith pendent-lite and future interest @16% till its realization. The decree was ordered to be drawn against defendant Nos. 2 & 3 only as defendant No.1 had died on 15.05.2005 and was deleted from the array of parties. No order was passed against the petitioner.

4. The respondent filed an Execution Petition No. 157/2007 tilted as *Canara Bank vs Mala & Anr* against defendant Nos. 2 & 3 in the suit seeking execution of the *ex-parte* decree dated 18.04.2007.

5. Vide order dated 12.04.2013, the Executing Court directed that the terminal benefits cannot be attached in execution of a civil decree. Section 60 (g), (k) and (ka) of the Code of Civil Procedure, 1908 [“CPC”] bars the attachment of stipend, gratuity and deposits in the Provident Fund as CPC gives blanket protection to the amount lying in the terminal benefits of any person from attachment. The learned Executing Court while passing this order placed reliance on the case of *Radhey Shyam Gupta vs Punjab National Bank 2009 (1) SCC 376*.

6. Vide subsequent order dated 17.11.2015, while relying on the decision in the case of *Ramwati vs Krishan Gopal & Ors, 34 (1988) DLT 136*, the Court was of the view that decree holder bank is entitled to the release of those benefits and passed orders for issuance of warrants of attachment of terminal benefits of Sh Pranab Kumar Chaudhary being held by the employer after his demise. It is this



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order which has been challenged in the present petition.

7. Sh. Mehandru, learned counsel for the petitioner submits that order dated 17.11.2015 is in complete contravention of the principles of *res judicata* because the question “as to whether the gratuity and the other terminal benefits payable to Sh Pranab Chaudhary, husband of Judgment Debtor No.1 and father of Judgment Debtor No.2 by the employer and held by employer after demise of Sh Pranab Chaudhary can be released to the Decree Holder in satisfaction of the judgment and decree in question” stood finally decided by the same predecessor Court vide order dated 12.04.2013.

8. Learned counsel further submits that the death gratuity of Sh Pranab Chaudhary was immune from attachment in view of Clause (g) of the proviso to Section 60 CPC. He submits that since there was no claimant to the gratuity, the same could be forfeited by the petitioner and by operation of Rule 52 of the Central Civil Services (Pension) Rules, the gratuity would lapse in favour of the petitioner.

9. *Per contra*, Mr. Malik, learned counsel for the respondent submits that gratuity is immune from attachment under Clause (g) of the proviso to Section 60 CPC only if it was received by the employee concerned. In the present case, he submits that the gratuity has not been received by Sh Pranab Kumar Chaudhary and insofar as his legal heirs are concerned, they would be entitled to receive the gratuity only as part of the estate of Pranab Kumar Chaudhary which is attachable by law.

10. In support of his arguments, learned counsel has placed reliance



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on the decision of coordinate bench of this Court in ***Ramwati vs Krishan Gopal*** (1987) SCC Online Del 390 and the judgment of learned Single Judge of High Court of Madras in ***Murugaiah Velar vs Velammal*** 2017 SCC Online Mad 2821.

11. No doubt as per Section 60 (1) (g) CPC, the gratuity amount allowed to the petitioners is exempted from attachment. The Hon'ble Supreme Court in the case of ***Radhey Shyam Gupta*** (*Supra*) held that the gratuity even when received by the retiree does not lose its character as gratuity and cannot be attached, in view of proviso (g) to Section 60 of CPC.

12. However, insofar as this case is concerned, employee expired before the release of gratuity to him. Such gratuity therefore becomes payable to the family/nominees of the deceased employee. The Decree holder in this case is seeking attachment of unreleased gratuity amount which by operation of CCS rules shall fall upon the hands of the Judgment Debtor.

13. The limited question which arises in the present petition is as to whether the gratuity which was payable to an employee who has died is liable to be attached against decree for recovery of money passed against the heirs of the employee.

14. In terms of clause (g) of proviso to Section 60 of the CPC, the gratuity is immune from attachment so long as it is received by the employee concerned. Admittedly, the gratuity has not been received by concerned employee Sh Pranab Kumar Chaudhary. The legal heirs of Sh Pranab Kumar Chaudhary would be entitled to receive the



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gratuity only as part of his estate.

15. While dealing with a similar issue, the coordinate bench of this Court in the case of *Ramwati* (Supra) affirmed the view taken in *Diwansingh vs Kusumbai 1969 MPLJ (SN) 63*, that the gratuity which was payable to the employee was sought to be attached in the hands of the employer on the ground that it turned into the nature of a debt payable to the legal heirs of the employee. The relevant para reads as under:-

“3. The facts, indeed, are not in dispute. The gratuity payable to Lakshmi Chand was attached and was paid to the decree holder in execution of the decree. The question which arises for decision is whether the said amount was attachable in law or not? Section 60(g) of the Code of Civil Procedure makes it clear that the provident fund and gratuity allowed to the 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 State Government in this behalf and political pensions are not liable to be attached in execution of a decree. Admittedly, the gratuity in question was payable to Lakshmi Chand by his employer. If Lakshmi Chand had been alive, he would have been definitely paid this gratuity and thus the same could not have been attached even if a money decree had been obtained against Lakshmi Chand. The question which arises for decision is whether with the death of Lakshmi Chand the nature of the said gratuity has changed in its character or it has to be termed as the gratuity still payable to the deceased. There was nothing brought on the record by the appellants to show that the payment of gratuity was only a gratuitous act of the employer of the deceased. Whether the payment of gratuity was a gratuitous act of the employer or not would have depended on the terms of the employment of Lakshmi Chand with his employer. It is also possible that the Delhi Cloth and General Mills, the employer of Lakshmi Chand, was legally bound to pay the gratuity.

“The lower Courts have placed reliance on *Diwan Singh v. Kumbai* [1969 (14) M.P.L.J. (S.N.) 63]. The facts of this



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case, as are apparent from the brief note of the judgment, are similar to the facts of the present case. In the cited case, the gratuity which was payable to the employee was sought to be attached in the hands of the employer on the ground that it turned into the nature of a debt payable to the legal heirs of the employee. The High Court upheld the plea of the decree holder and held that the amount of gratuity lying with the employer was attachable on the death of the employee as the amount becomes a debt payable by the employer to the legal heirs of the employee. Section 60(g) of the Code of Civil Procedure also speaks about gratuity allowed to the pensioners meaning thereby that only if the gratuity is payable to the employee then the same is not liable to be attached. If the employee is dead, obviously, the gratuity cannot be deemed to be payable to the employee. If the said gratuity becomes payable to the heirs of the employee, obviously, the same becomes attachable in the hands of the employer as the employer is legally bound to pay the said gratuity to the legal heirs of the employee. I am in complete agreement with the ratio laid down by the Madhya Pradesh High Court in the aforesaid judgment and hold that this amount of gratuity which was attached by the Court in the hands of the employer is not now liable to be refunded to the appellant.”

16. Learned counsel for the petitioner submits that the judgment of Delhi High Court in **Ramwati** has been superseded by **Radhey Shyam Gupta** (supra) and therefore, the law laid down in the case of **Ramwati** is no more a good law.

17. However, I am not in agreement with the arguments of learned counsel inasmuch as the judgment of **Radhey Shyam** (supra) is inapplicable in the present case for the reason that employee had received the gratuity in that case unlike the present case where the employee had expired before receiving the gratuity.

18. A similar issue arose before the learned Single Judge of High Court of Madras in **Murugaiah Velar vs Velammal** (2017) SCC Online Mad 2821. The relevant para of the judgment reads thus:-



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“6. No doubt, as per the Code of Civil Procedure, the gratuity amount allowed to the pensioners is exempted from attachment. However, insofar as this case is concerned, the respondents 1 to 3/defendants are claiming right over the gratuity amount only in their capacity as the legal representatives of the deceased borrower. In such circumstances, it is found that when the exemption provided to the gratuity amount would be made applicable only to the deceased borrower and the said exemption cannot be claimed by his legal representatives as they inherit the gratuity amount in their capacity as the legal representatives of the deceased and in such circumstances, the estate of the deceased lying in the hands of the legal representatives are liable for action pursuant to the decree passed in the suit and in such view of the matter, it is found that the respondents 1 to 3/defendants cannot claim the benefit of the provision of Section 60(g) of the Code of Civil Procedure as they cannot be equated as pensioners entitled to receive the gratuity amount as such. When it is found that they would be entitled to get the gratuity amount only in their capacity as the legal representatives of the deceased borrower and so seen it is found that the same would constitute only the estate of the deceased in their hands and the position being above, it is found that the respondents 1 to 3/defendants cannot seek the benefit of the exemption provided to the deceased borrower under Section 60(g) C.P.C.

7. Be that as it may, a perusal of Section 60(g) C.P.C., would go to show that the gratuity amount allowed to the pensioners alone is exempted from attachment and once the gratuity amount is lying in the hands of the legal representatives of the pensioners, it would come under the classification of the estate in the hands of the legal representatives and therefore, the legal representatives cannot seek the benefit of the above said provision of law and therefore, it is found that the Lower Court had erred in raising the attachment passed in I.A. No. 443 of 2001. The learned counsel for the respondents 1 to 3/defendants, in support of his contentions, placed reliance upon the decision in (2001) 6 SCC 591 [*Corakhpur University v. Dr. Shitla Prasad Nagendra*]. However, as rightly put forth by the learned counsel for the revision petitioner, the said decision is found to be not applicable to the facts and circumstances of the case at hand.”

19. In the view thereof, if the gratuity was released to Sh Pranab



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Kumar Chaudhary during his lifetime, the same would have been immune from attachment under Clause (g) of proviso to Section 60 of the CPC. The gratuity has not been received by Sh Pranab Kumar Chaudhary and therefore, insofar as his legal heirs are concerned, they would receive the same only as part of the estate of Sh Pranab Kumar Chaudhary which is not immune from attachment.

20. Learned counsel for the petitioner submits that neither the deceased left behind any legal heir nor made any nomination and therefore, his retirement/death gratuity shall lapse to the government in terms of Rule 52 of the CCS Pension Rules. The said rule provides as under:-

52. Lapse of [retirement gratuity / death gratuity]

Where a government servant dies while in service or after retirement without receiving the amount of gratuity and leaves behind no family and-

(a) has made no nomination, or

(b) the nomination made by him does not subsist.

The amount of [retirement gratuity/ death gratuity] payable in respect of such government servant [under rule 50 shall lapse to the government:

Provided that the amount of death gratuity/retirement gratuity shall be payable to the person in whose favour a succession certificate in respect of the gratuity in question has been granted by a Court of Law.”

21. Petitioner has averred in his petition that respondent had filed the suit for recovery against four defendants including Smt Jaya Chaudhary, (w/o Late Sh Pranab Kumar Chaudhary), Ms Mala, (D/o Late Sh Pranab Chaudhary). Smt Jaya Chaudhary, died on 15.05.2005



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and was deleted from the array of parties. Ms .Mala, (D/o Late Sh Pranab Chaudhary) is the only surviving Judgment Debtor. The retirement/death gratuity of the deceased employee Sh Pranab Kumar Chaudhary is therefore payable to her being a family member. Even though the deceased employee made no nomination, the gratuity amount was still payable to the family members and therefore, Rule 52 of CCS Pension Rules shall not be applicable in the present case.

22. The argument that the subsequent orders dated 17.11.2015 and 04.12.2019 are barred by *res judicata* as order on the same issue had already been passed by the learned Executing Court on 12.04.2013 is also without any merit.

23. A similar argument was raised in ***Ramwati's*** case and while dealing with the same, this Court in para 4 of the judgment observed as under:-

“4. Counsel for the appellants has argued that the order of the Court made during the pendency of the suit by which it was held that the gratuity was not attachable operates as *res judicata*. In *Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy* [(1970) 1 SCC 613 : AIR 1971 SC 2355], it was held that if by any erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not operate as *res judicata*. It was held in this very judgment that it is true that in determining the application of the rule of *res judicata*, the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact decided in the earlier proceeding by a competent Court, must in a subsequent litigation between the same parties be recorded as finally decided and cannot be reopened. It was observed that a mixed question of law and fact determined in the earlier proceedings between the same parties may not for the same reason be questioned in the subsequent proceedings between the same parties. It was held that where the decision is on a question of law or the interpretation of



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statute, it will be *res judicata* in subsequent proceedings between the same parties, where the cause of action is the same, for the expression “the matter in issue” in S. 11, Civil Procedure Code, means the right litigated between the parties, *i.e.*, the facts on which the right is claimed or denied and the law applicable to the determination of that issue. However, where the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of *res judicata*, a party affected by the decision will not be precluded from challenging the validity of the order under the rule of *res judicata*, for a rule of procedure cannot supersede the law of the land.

5. In the present case, it was purely a question of law with regard to the interpretation of S. 60(g) as to whether the gratuity is liable to attachment or not after the death of the employee and thus it went to the jurisdiction of the Court regarding its power to attach the amount or not to attach the amount and any wrong decision of law cannot operate as *res judicata*. So, I hold that this appeal has no merit. I dismiss the appeal but in view of the legal question involved, I leave the parties to bear their own costs throughout.”

24. The decision in ***Ramwati’s*** case is squarely applicable to the facts of the present case. The interpretation of Section 60 (g) of the CPC is purely a question of law. The order dated 12.04.2013 passed by the Executing Court cannot operate as *res judicata*. I, therefore, find no infirmity or perversity in the impugned order dated 04.12.2019 passed by learned Civil Judge, Tis Hazari Court, Delhi. The petition is accordingly dismissed.

RAVINDER DUDEJA, J.

MAY 20, 2025

Sk /AK