

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Ashworth.

GAURI SHANKAR (CREDITOR-APPELLANT) v. R. J. DE
CRUZE (INSOLVENT-RESPONDENT).*

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Provident Funds Act (IX of 1897), section 2(4)—Provident fund money drawn by an insolvent from a railway company, vesting of, in a court or receiver—"Compulsory deposit" in section 2(4) of the Provident Funds Act. meaning of—Provincial Insolvency Act (V of 1920) section 28(4).

Held, that a "compulsory deposit" as defined by section 2(4) of the Provident Funds Act (IX of 1897) is only a deposit so long as it remains in the fund, and not after it has been paid over to the person to whose credit it has hitherto stood.

Held further, that money drawn by an insolvent as standing to his credit in a provident fund from the railway company after the date of adjudication and before his discharge is liable to attachment at the instance of a creditor. [I.L.R., 44 Bom., dissented from; (1890) Q.B.D., 262 and 21 Rom., L.R., 849, referred to.]

The case was originally heard by SIMPSON, A. J. C., of the late Court of the Judicial Commissioner of Oudh, who, by his order, dated the 27th of August, 1925, certified it to be a fit case to be heard by a Bench. His order is as follows:—

"This is an appeal from an order of an insolvency court. The insolvent, R. J. De Cruze, was adjudged insolvent on the 26th of October, 1923. At that time he was an employee of the Oudh and Rohilkhand Railway, and there stood to his credit a sum of Rs. 4,800 in the provident fund. Subsequently to his

* First Miscellaneous Appeal No. 41 of 1925, against the order, dated the 5th of March, 1925, of Mahmud Hasan, Fourth Additional District Judge of Lucknow.

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adjudication and before his discharge which has not yet taken place, he drew out this money. A creditor has claimed that this money vests in the court under section 28 of the Provincial Insolvency Act, and ought to be distributed among the creditors. The insolvency court, relying on *Nagindas Bhukandas v. Ghelabhai Gulabdas* (1), has decided that the provident fund even after it is received by the insolvent does not vest in the receiver. In *Devi Prasad v. Secretary of State for India* (2), DANIELS, J., doubted this decision.

The matter is of some importance and has not hitherto been decided by this Court. I certify that the appeal ought to be heard by a Bench. Let an early date be fixed. ”

Mr. *M. Wasim* and Mr. *L. S. Misra*, for the appellant.

Mr. *Ram Shankar*, for the respondent.

HASAN and ASHWORTH, JJ. :—This is an appeal from an order of the Fourth Additional Judge of Lucknow in insolvency proceedings. The insolvent, R. J. DeCruze, resigned his position as an employee in the Oudh and Rohilkhand Railway. A sum of Rs. 4,800 standing to his credit in the provident fund was then returned to him. He had at an earlier date been made an insolvent, but had not been discharged. A creditor, the appellant, asked (no receiver having been appointed) to be allowed to attach this sum. The insolvent contended that it was not attachable. The lower court, relying on the

(1) 1920 44 Bom., 673.

(2) 45 All., 554.

case of *Nagindas Bhukandas v. Ghelabhai Gulabdas* (1), upheld this contention. The question in this appeal is whether the lower court was right in doing so.

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The decision relied upon appears to us to be on all fours with the present case, but we regret that we are not disposed to follow it. It was admitted in the judgment of the Bombay Court that, under section 16(4) of the Provincial Insolvency Act (III of 1907), which is identical with section 28(4) of the present Act (V of 1920), all property acquired by an insolvent after the date of adjudication, and before his discharge, shall forthwith vest in the court or receiver, and it was remarked that, at first sight, it would appear that these words in their literal construction are free from any doubt. But the Bombay High Court refused to adopt a literal construction on two grounds. The first ground was that in the English case, *Cohen v. Mitchell* (2), the English Court had declined to follow the literal construction of sections 44 and 54 of the English Bankruptcy Act on the ground of inconvenience, and the Bombay High Court pointed out, that in a previous case decided by the Bombay High Court, *Alimahmud v. Vadilal* (3), the court had allowed itself the same measure of freedom. It suffices to say that the earlier Bombay case was distinguishable both from the later Bombay case and from the present case, inasmuch as in that case the insolvent had transferred property in good faith acquired by him after the adjudication order to a third party for value. It was not pleaded in this case that the provident fund money had passed out of the control of the insolvent. In the later Bombay case, however, it has been held,

(1) (1920) 44 Bom., 673.

(2) (1890) Q.B.D., 262.

(3) (1919) 21 Bom. L.R., 849.

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that neither the official assignee nor the official receiver (and similarly the court) has any claim to money drawn by an insolvent as his provident fund from a railway company. The English ruling *Cohen v. Mitchell* (1), appears to us to be no authority for such a view. It was dealing, like the earlier Bombay case with a case of transfer of property in good faith for consideration but apart from the authority of *Cohen v. Mitchell* (1) the decision in *Nagindas Bhukandas v. Ghelabhai Gulabdas* (2) was based on other considerations. It invoked section 4 of the Provident Funds Act, 1897, which is still in force. This section provides that neither the official assignee nor receiver, appointed under chapter XX of the Code of Civil Procedure, shall be entitled to or have any claim on a compulsory deposit. The present section 57 of the Provincial Insolvency Act (V of 1920), takes the place of section 351 of the Code of Civil Procedure of 1882 as regards the appointment of receivers. The Bombay High Court expressed the opinion that the words " shall be entitled to or have any claim on any such compulsory deposit," would bar a claim to a compulsory deposit even after it had been paid over to the insolvent. In so doing we consider that the Bombay High Court ignored the definition of " compulsory deposit " contained in section 2(4) of the Provident Funds Act (IX of 1897). This definition runs as follows:—

“ Compulsory deposit means a subscription or deposit which is not repayable on demand or at the option of the subscriber or depositor, etc.”

In our opinion the words " repayable on demand " clearly show that a compulsory deposit is only a deposit so long as it remains in the fund,

(1) (1890) Q.B.D., 262.

(2) (1920) 44 Com., 673.

and not after it has been paid over to the person to whose credit it has hitherto stood.

The respondent's Counsel invoked sub-section (5) of section 28 of the Provincial Insolvency Act (V of 1920). This provision excludes from attachment property which is exempted by the Code of Civil Procedure, 1908. Turning to the Code of Civil Procedure, 1908, we find that section 60(1) *proviso* (k) exempts from attachment all compulsory deposits and other sums in, or derived from, any fund to which the Provident Funds Act, 1897, for the time being applies, in so far as they are declared by the said Act not to be liable to attachment, but we have already stated that the Provident Funds Act, 1897, only exempts compulsory deposits, and that the definition of compulsory deposit will not include money after it has been paid out of the funds to an insolvent. The Code of Civil Procedure does not, therefore, carry us any further or assist the insolvent.

We are not concerned here with deciding whether the Bombay High Court in its earlier decision quoted above, was right in holding that the receiver could not interfere with property once it was transferred to a third party in good faith for consideration by the insolvent after an order of adjudication. It is obvious that money paid over by an insolvent to his wife, as is alleged to have been the case in respect of this money by appellant's Counsel, cannot come under this description of property. For the above reasons, dissenting from the decision in *Nagindas Bhukandas v. Ghelabhai Gulabdas* (1) we allow this appeal with costs, and direct the lower court to take into consideration the appellant's application on its merits.

Appeal allowed.

(1) (1920) 44 Bom., 673.

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