

APPELLATE CIVIL.

1938.

September,
7, 13, 14.*Before Khaja Mohamad Noor and Chatterjee, JJ.*

BANSI LAL

v.

MAULAVI MOHAMAD HAFIZ.*

Code of Civil Procedure, 1908 (Act V of 1908), sections 2(17) and 60(1)(i) as it stood before the amending Act IX of 1937—Advocate engaged to conduct a suit on behalf of Government, whether is a "Public Officer" within the meaning of section 2(17)—remuneration, whether comes within the exception of section 60(1)(i)—fee, already earned, whether attachable at all.

A debt in order to be attachable need not necessarily have become payable.

A daily fee stipulated to be paid to an advocate becomes due to him after each day's work, and the amount already earned, whether it has become payable or not, is attachable.

An advocate who is engaged on a daily fee of a fixed sum to conduct a civil suit on behalf of the Government is, for the purpose of that case, a "public officer" within the meaning of section 2(17) of the Code of Civil Procedure, 1908, and his remuneration is 'salary' coming within the exception contained in clause (i) of section 60(1) of the Code, as it stood before the amending Act IX of 1937, and is, therefore, liable to be attached only to the extent indicated therein.

Appeal by the decree-holders.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

B. P. Sinha, for the appellants.

K. Husnain (with him *S. A. Khan, A. Reza, S. M. Saleem, M. Azizullah* and *A. Moin*), for the respondent.

*Appeal from Original Order no. 151 of 1938, from an order of Babu N. K. Choudhury, Subordinate Judge, Patna, dated the 14th July, 1938.

KHAJA MOHAMAD NOOR, J.—This appeal arises out of an execution proceeding and the facts leading up to it are these :

The appellants hold a decree for a certain sum of money against the respondent who is an Advocate of this Court. The Provincial Government engaged the Advocate to conduct a civil suit at Chaibassa for recovery of public money. His remuneration was fixed at a certain sum as daily fee, which included the remuneration of his clerk also. It was also understood that the fee for a month would be paid if billed for at the end of the month. It is not disputed that the Advocate, judgment-debtor, began working for the Government at Chaibassa in the month of April, 1938, and continued to do so till at least the end of May, or perhaps till some time in June. His remuneration for the month of April amounting to Rs. 1,950 and for the month of May amounting to Rs. 3,120 were payable to him by the officers of the Provincial Government at the close of each of these two months.

On the 17th May the decree-holder appellants executed their decree and asked for attachment of the remuneration of the Advocate which had already become due from the Government and those which were likely to fall due to him. Later on a second application was made some time in June for the attachment of remuneration of May also which had, according to the contention of the decree-holders, become due by them. The attachments were accordingly ordered.

The judgment-debtor raised two objections to the attachment. One was that out of the money due to him from the Government, ten per cent. was the remuneration of his clerk and to that extent it was not the property of the judgment-debtor. Regarding the rest, he relied upon section 60(1)(?) of the Code of Civil Procedure as it stood prior to the

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amendment of 1937, and contended that not more than half of it was attachable.

The learned Subordinate Judge allowed the objections and he withdrew the attachment to the extent of eleven-twentieths of the money due to the judgment-debtor from the Government and maintained the attachment for the rest of it, that is, to the extent of nine-twentieths of the amount.

The decree-holder has preferred this appeal.

The judgment-debtor has also preferred a cross-objection questioning the attachment itself. It will be convenient to dispose of the cross-objection first. Now, the objection that the money due to the judgment-debtor from Government was not attachable at all was not raised before the learned Subordinate Judge, and then the objection itself has no substance. The learned Advocate for the judgment-debtor contended that the judgment-debtor had only an actionable claim against the Government, and it was not attachable. We have seen the letter of Government appointing the judgment-debtor to conduct the case on behalf of the Government. It clearly specifies a certain daily fee payable to him, and also says that it would be convenient if the Advocate submitted his bills for the payment of the money at the end of each month. I have no doubt that after each day's work the daily fee stipulated became due to the judgment-debtor from the Government and that all the daily fees of a month became payable to him at the end of the month. Therefore, there is no question that when the decree-holders applied for attachment on the 17th May, 1938, fees for the month of April were not only due to the judgment-debtor but in fact had become payable and the fees up to the 17th of May were due to the judgment-debtor though they had not become payable till then. A debt for the purpose of being attachable need not necessarily have become payable. For

instance, a bond which has not matured and which will become payable after some time is certainly a debt which can be attached and sold and the person who purchases it will be entitled to realise the amount of the bond or the debt when it becomes payable. It is not an uncertain sum, nor merely a right to sue. It is an existing property vested in the judgment-debtor, though the time of its realisation has not come. Take another instance: a person has deposited his money in a bank on twelve months' or two years' notice. The money is not payable by the bank till the time of payment comes, but nevertheless the money is the property of the depositor and is liable to be attached and sold. Therefore, I have no doubt that the remunerations earned by the judgment-debtor till the 16th May were attachable when the application was made on the 17th May and whatever objection could have been raised about the attachment of the remuneration of the subsequent period, which had not been earned and had not become due, the objection is not available to the judgment-debtor, as in the month of June an application for attachment was made and no objection to the attachment was raised on his behalf. The Court rightly or wrongly ordered the attachment of it and the judgment-debtor acquiesced in it. On the whole, I am convinced that there is no merit in the cross-objection.

I now take up the main appeal itself. The learned Advocate for the appellants has contended, first, that the judgment-debtor was not a public officer; and, secondly, that if he was a public officer his remuneration is not exempt under section 60(1)(i) of the Code of Civil Procedure. He has also contended that ten per cent. allowed for the clerk is excessive.

The first thing to be considered is whether the judgment-debtor, during the time when he was acting for the Government, was a public officer within section 2 of the Code of Civil Procedure. The only

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clause which can be applied is clause (h) of section 2(17) which runs thus:—

“every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty.”

This clause refers to three classes of persons: first, every officer who is in the service of Government—it does not matter whether he is paid or not. As long as he is in the service of the Government, or, in other words, he serves the Government, he is a public officer. In the second category are those who are in the pay of the Government. Here the Legislature has not specified the work which these persons are to perform: that is to say, it has been presumed that when an officer is in the pay of the Government he must have been performing a public duty. In the third category are those who are remunerated by fees or commission and in order that they be held to be public officer it is necessary that the payment should be for the performance of any public duty. In my opinion during the period the judgment-debtor was engaged by the Government to conduct a civil suit, he was in the pay of the Government. An advocate who is engaged to conduct a case on behalf of a client is, for the purpose of that case, in the pay of his client, because he is being paid for the work which he performs for him. Assuming, however, that he did not come within the category of an officer being in the pay of the Government, he certainly came under the third category because he was being paid by fees for performing a public duty. Conduct of a suit on behalf of the Government for the recovery of public money is performing a public duty which an Advocate undertakes. Civil suits by the Government or against the Government are public suits though with some exception the procedure of trial is the same as of suits between two private individuals. Government property is public property and recovering it is in the interest of the public and it is the duty of the Government to recover it from those who are not

entitled to retain it. A lawyer engaged by the Government to represent it before a Court performs a public duty when he does so. When a Government enforces a claim or refutes a claim it does so on behalf of the public as the Government is a public institution.

The learned Advocate for the appellant contended that the judgment-debtor, though he may be in the pay of the Government and remunerated by fees for performing a public duty, was not a public officer as he was not an officer. The word 'officer' has not been defined in the Code and, therefore, we must apply the dictionary meaning of the word. In Stroud's Judicial Dictionary the word 'officer' is defined as "one who holds an office", and the word 'office' is defined as "a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging". The judgment-debtor in this case on his appointment as a lawyer by the Government had to exercise a right of employment in the suit to conduct it on behalf of the Government. He was an officer and a public officer.

The next consideration is whether the emoluments of the judgment-debtor come within the exemptions of clause (i) of section 60(1) of the Code of Civil Procedure. Clauses (h) and (i) of section 60(1) which exempt the salaries of public officers have been amended by Act IX of 1937. But the amended section has no application in proceedings arising out of a suit instituted before the 1st day of June, 1937. As in this case the suit in which the decree under execution was passed was instituted long before June, 1937, the law applicable will be the law as it stood before the amendment. The two clauses (h) and (i) as they stood before the amendment must be read together. They ran thus:—

"(h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;"

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“(i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h) while on duty, to the extent of etc., etc....”

They refer to three kinds of emoluments of a public officer. Clause (h) deals with allowances which are given to him while he is not on duty. If this allowance is less than his salary, it is absolutely exempt from attachment. Clause (i) deals with two classes of cases. One is the “allowances” which are referred to in sub-clause (h) but when they are equal to the salary, and the second refers to the salary itself. These two are attachable to a limited extent, as prescribed in the clause itself. The learned Advocate for the appellants, however, contended that salary does not cover the daily fees which were payable to the judgment-debtor. He contended that salary is what is payable to a permanent or semi-permanent employee, and not the remuneration of a temporary employee engaged on daily fee. One need not refer to the new section 60 of the Code of Civil Procedure which makes the matter clear where the salary for the purposes of clauses (h) and (i) means the total monthly emolument excluding any allowance which is exempted by Government. I do not wish to take help from this amended section because it is not applicable to the present case. But here again one must have resort to the dictionary meaning of the word ‘salary’. Stroud’s Judicial Dictionary defines the word ‘salary’ as “recompence or consideration given unto any man for his pains bestowed upon another man’s business”. I do not find anything which restricts the word ‘salary’ to an emolument which is payable monthly or that it refers to the emolument payable to a man who holds a permanent or a semi-permanent employment.

The learned Advocate further contended that clause (i) is applicable to the case of those to whom clause (h) applies, namely, the salary mentioned in clause (i) refers to the salary of one who is entitled to

get allowances mentioned in clause (h). I see no reason to restrict the scope of clause (i). Whether a particular officer is entitled to get any allowance while absent from duty is a matter of contract between him and his employer, the Government. Then the exemptions are not in favour of public officers only. They extend to any servant of a railway company or local authority. There may be cases in which under the terms of employment a servant of a railway company or local authority is not entitled to any allowances while absent from duty. No doubt clause (i) refers to clause (h) but only to avoid repetition of the description of officers whose salaries have been exempted. It does not follow that their salary for the period for which they are on duty is not covered by clause (i) of section 60(1).

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Regarding the fee of the clerk which the learned Subordinate Judge has held to be ten per cent. of the amount payable to the judgment-debtor, he is in my opinion correct. Under the High Court Rules a clerk of an Advocate is entitled to get not less than five per cent. Ten per cent is reasonable and not excessive.

On the whole, I am of opinion that the learned Subordinate Judge had taken the correct view of the case and the appeal must be dismissed.

The result is that the appeal and cross-objection are both dismissed but there will be no order for costs.

The order of temporary attachment passed by the Registrar for the money beyond what has been attached by the Subordinate Judge is vacated.

The attachment to the extent ordered by the learned Subordinate Judge will remain in force.

CHATTERJI, J.—I agree.

S. A. K.

Appeal and Cross-objection dismissed.