APPELLATE CIVIL.

Before Mr. Justice Rangnekar and Mr. Justice Divatia.

WALCHAND MOLAJI MARWADI (ORIGINAL PETITIONING CREDITOR), APPELLANT *v.* CHARLES A. WILLIAMS (INSOLVENT) AND OTHERS (ORIGINAL INSOLVENT, CREDITOR AND RECEIVER), RESPONDENTS.*

1935 *January* 18

Provident Funds Act (XIX of 1925), section 2 (a)—Compulsory deposit—Government provident fund—Provincial Insolvency Act (V of 1920), section 28, sub-sections (2) and (4)—Subscriber becoming insolvent—Order of adjudication—Payment of fund to insolvent on retirement from service—Fund property of insolvent—Amount vests in Receiver—Civil Procedure Code (Act V of 1908), section 60 (1) (k)—If such amount is liable to attachment.

The first respondent was a subscriber to a Government provident fund and had a sum of Rs. 4,540 standing to his credit in that fund. He retired from service and in September 1931 the amount was paid to him. Previous to that, in July 1931 he was adjudicated an insolvent when his estate vested in the Receiver. The said amount was paid by the first respondent to one of his creditors, viz., the second respondent who had obtained a money decree against him. The appellant, another creditor of the insolvent, applied to the Court stating that the amount had vested in the Receiver and was divisible among the first respondent's creditors in insolvency. The lower Court dismissed the application. On appeal to the High Court:

Held, reversing the decree, that the amount in question became the property of the insolvent after it was received by him and it, therefore, vested in the Receiver in his insolvency.

Nagindas Bhukhandas v. *Ghelabhai Gulabdas*,[1] commented on.

Gauri Shankar v. *E. J. De-Cruze*,[2] *Ranganayaki* v. *Official Assignee*,[3] *Official Assignee of Madras* v. *Mary Dalyairns*[4] and *Hindley* v. *Joynarain Marwari*,[5] referred to.

SECOND APPEAL from the decision of D. D. Nanavati, District Judge, Poona, in Appeal No. 8 of 1933 preferred against an order passed by B. V. Potdar, First Class Subordinate Judge, Poona, in Insolvency Application No. 51 of 1929.

Application for share in Government provident fund.

The material facts appear sufficiently from the judgment of the Court.

S. G. Patwardhan and *T. N. Walawalkar*, for the appellant.

*Second Appeal No. 361 of 1933.

(1) (1919) 44 Bom. 673.
(2) (1925) 1 Luck. 313.
(3) [1931] A. I. R. Mad. 797.
(4) (1902) 26 Mad. 440.
(5) (1919) 46 Cal. 962.

1935

WALCHAND MOLAJI v. CHARLES A. WILLIAMS

M. R. Jayakar, with *P. V. Kane* and *G. M. Joshi*, for respondent No. 2.

RANGNEKAR J. This second appeal raises a point of considerable importance. The facts, which give rise to the question which we have to decide, are, briefly, as follows.

The first respondent was employed in the Ammunition Factory at Kirkee. The second respondent and some others had obtained a money-decree against him. In execution of that decree, the salary of the first respondent was attached, and one instalment of Rs. 125 was paid in Court as a result thereof. In the meanwhile, respondent No. 1 retired from his service. He had subscribed to the provident fund, which, it is common ground, was Government provident fund, and had a sum of Rs. 4,540 standing to his credit in that fund. That amount was paid to him on September 1, 1931. Previous to that, however, he was adjudicated an insolvent on July 18, 1931 ; and, it is clear that, under the provisions of the Provincial Insolvency Act, his estate had vested in the receiver. The appellant was, admittedly, one of his creditors ; and he applied, under sub-section (*4*) of section 28 of the Provincial Insolvency Act, in effect, for a declaration that the amount of Rs. 4,540, which the insolvent had paid to the second respondent, had vested in the receiver as the property of the insolvent and was divisible among his creditors in his insolvency.

The learned First Class Subordinate Judge relied upon *Nagindas Bhukhandas* v. *Ghelabhai Gulabdas*,[1] and dismissed the suit. He, however, held that the second respondent had actually received the sum in question from the insolvent.

An appeal from that decision was summarily dismissed by the learned District Judge of Poona ; and it is from this order that the appellant has now appealed.

[1] (1919) 44 Bom. 673.

If we had felt that this case was governed by the decision in *Nagindas's* case,[1] in the view which we take of the law, we should have felt ourselves bound to refer this to a Full Bench. Speaking for myself,—and, with respect,—I am unable to agree with the decision in that case. But, I think, having regard to the change in the law, it is not necessary for us to make a reference to a Full Bench; and the matter may shortly be stated in this way.

The question, which we have to decide, is: whether the sum, standing to the credit of a subscriber, under the Provident Funds Act, when received by him before his death, vests in the receiver in his insolvency.

I shall first deal with the relevant provisions of the Provincial Insolvency Act (Bom. V of 1920). Section 28, sub-section (*4*), of the Act, provides that :—

"All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub-section (*2*) shall apply in respect thereof."

The effect of sub-section (*2*) is, that on the making of an order of adjudication, the whole of the property of the insolvent vests in the receiver and becomes divisible amongst his creditors.

Apart from anything else, therefore, the moment the moneys came in the hands of the insolvent, they vested in the receiver appointed in his insolvency.

The second respondent, however, argues that this particular kind of property does not vest in the receiver, and relies in support of the contention on sub-section (*5*) of section 28, which runs in these terms :—

"The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree."

It is contended before us that this sum was not attachable under section 60 (*1*), clause (*k*), of the Civil Procedure

[1] (1919) 44 Bom. 673.

1935

WALCHAND MOLAJI v. CHARLES A. WILLIAMS

Rangnekar J.

Code, as also by reason of the provisions of the Provident Funds Act.

Clause (*k*) of section 60 (*1*) of the Civil Procedure Code is in the following terms :—

"(*k*) 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."

It is clear from this provision that the deposits and the sums mentioned therein are exempt from attachment in execution of a decree, but only to the extent to which they are declared to be so exempt by the Provident Funds Act of 1897. We must, therefore, turn to that Act. Section 4 of that Act provides as follows :—

"After the commencement of this Act, the compulsory deposits in any Government or Railway Provident Fund shall not be liable to attachment under any decree or order of a Court of Justice in respect of any debt or liability incurred by a subscriber to, or depositor in, such Fund, and neither the Official Assignee, nor a Receiver appointed under Chapter XX of the Code of Civil Procedure, shall be entitled to, or have any claim on, any such compulsory deposit."

It is not disputed before us,—and, I think, it cannot be disputed, having regard to the current of decisions, some of which I shall refer to presently,—that, as long as a compulsory deposit is in the hands of the Government or the institution which keeps and manages the Fund, it is exempt from attachment under any decree, and neither does it vest in the Official Assignee nor in a receiver appointed under Chapter XX of the Code of Civil Procedure. But, it is asserted, on the strength of some rulings of the Courts, that, after the amount standing to the credit of a subscriber is paid to him and comes into his hands, it ceases to retain its character of a compulsory deposit, and it becomes his property, with which he can deal in any manner he likes, and liable, therefore, to be attached in execution of decrees against him, or against which his creditors can proceed; and, for the same reason, it must vest in the receiver, if he is adjudicated an insolvent, either before or after such acquisition of it by him.

The position as regards attachment is put by the late Sir Dinshah Mulla in his Commentary on the Civil Procedure Code, 10th Edn., in this way (p. 224) :—

"A compulsory deposit cannot be attached so long as it retains the character of compulsory deposit. A deposit which, when it was made, was a 'compulsory deposit', continues to retain that character *so long as it remains in the hands of the Railway Company* . . . But once it is *paid out* by the Company on the happening of any of the above events" (he refers to retirement and so on) "it loses the character of 'compulsory deposit', and it may be attached in the hands of the party to whom it has been paid."

We agree with these observations. It is stated before us that this proposition is not supported by the cases which the learned commentator has mentioned in foot-note (*h*). Some of these decisions we have seen for ourselves, and we cannot agree with this contention.

This, then, would be the position under the old Act. But the position now is altered by reason of the new Act, Provident Funds Act, XIX of 1925. The first important alteration, which the Legislature has made, is in the definition of the expression "compulsory deposit", which occurs in clause (*h*) of section 60 (*1*) of the Civil Procedure Code. In the old Act, "compulsory deposit" was defined by sub-section (*4*) of section 2 in the following way :—

"'Compulsory deposit' means a subscription or deposit which is not repayable on the demand, or at the option, of the subscriber or depositor, and includes any contribution which may have been credited in respect of, and any interest or increment which may have accrued on, such subscription or deposit under the rules of the Fund."

In the new Act, it is defined in section 2 (*a*) in the following manner :—

"'Compulsory deposit' means a subscription to, or deposit in, a Provident Fund which, under the rules of the Fund, is not, until the happening of some specified contingency, repayable on demand otherwise than for the purpose of the payment of premia in respect of a policy of life insurance, or the payment of subscriptions or premia in respect of a family pension fund, and includes any contribution and any interest or increment which has accrued under the rules of the Fund on any such subscription, deposit or contribution, and also any such subscription, deposit, contribution, interest or increment remaining to the credit of the subscriber or depositor after the happening of any such contingency."

1935

WALCHAND MOLAJI v. CHARLES A. WILLIAMS

Rangnekar J.

The important words to notice are "until the happening of some specified contingency".

Now, it is obvious that the contingency, which is contemplated by the definition, must be provided for, and is usually provided for, by the rules which the authority having the custody and administration of the Fund is entitled to make in regard to the Fund under the Provident Funds Act. Unfortunately, we have not got the rules which relate to the present Fund. But, it is clear,—and it cannot be disputed, having regard to the fact that the payment was made during the life-time of the subscriber,—that the first respondent had become entitled to that payment, as the contingency on which his right to payment rested had occurred.

Now, section 4 of the new Act, to which there is no corresponding provision in the old Act, is rather an important section, and provides, in the first instance, that, if, under the rules of any Government or Railway Provident Fund, the sum standing to the credit of any subscriber or depositor, or the balance thereof after making any deduction authorised by the Act, becomes payable, the officer, whose duty it is to make the payment, shall pay the sum or balance, as the case may be, to the subscriber or depositor, or, if he is dead, to his dependant or nominee, and in certain cases even to his assignee. So that, under the new Act, the subscriber is entitled to receive payment of the sum standing to his credit even in his life-time, if the rules of the Fund so permit. Under the old Act, however, no subscriber was entitled to payment during his life-time. Section 3 of the old Act is the corresponding section, and it only permits payments being made when the subscriber is dead.

Under the present Act, therefore, it is clear that, on the happening of the contingency provided for in the rules, the amount becomes payable to the subscriber even during his life-time. And that being so, it is difficult to see on what

principle it can be said that the sum which is paid to the subscriber is not his property and still continues to retain its character of a compulsory deposit for all time.

It is argued on behalf of respondent No. 2 that the compulsory deposit, not only whilst it is held by the institution, but even after it is paid to the subscriber, cannot be attached under section 60 (*1*), clause (*k*), of the Civil Procedure Code; and, for that purpose, the words in that clause, namely, "and other sums in or derived from any fund" are relied upon. The argument, as I understand, is that this clause saves not only compulsory deposits in the Fund, or sums in the Fund, that is to say, lying in the Fund, but it protects sums or deposits derived from the Fund, that is to say, paid from the Fund to the subscriber. I have no difficulty in rejecting this contention upon the plain language of the section and having regard to the definition of "compulsory deposit" in the new Act, which, as I have pointed out, differs from that in the old Act. I think the words "sums in or derived from any fund," in clause (*k*) of section 60 (*1*), Civil Procedure Code, mean the subscription of the subscriber plus interest or increment or contribution made by the authority having the custody and administration of the fund and nothing more.

Respondent No. 2, as stated above, relies upon *Nagindas Bhukhandas* v. *Ghelabhai Gulabdas*.[1] Now, this case, with which I have dealt briefly, does certainly seem to support the position taken up on behalf of respondent No. 2. That decision, however, has been dissented from by the Lucknow Chief Court as also by the Madras High Court, and is certainly opposed to the decisions of the Calcutta High Court.

In *Gauri Shankar* v. *R. J. De-Cruze*[2] it was 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

[1] (1919) 44 Bom. 673.

[2] (1925) 1 Luck. 313.

1935

WALCHAND MOLAJI v. CHARLES A. WILLIAMS

Rangnekar J.

as it remains in the fund, and not after it has been paid over to the person to whose credit it had hitherto stood. It was further held 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; and *Nagindas'* case[1] was dissented from. This was a decision under the old Act; and, if that was the position under the old Act, in our opinion, the position under the new Act is stronger and in favour of the appellant rather than in favour of the respondents.

In *Ranganayaki* v. *Official Assignee*[2] it was held that a compulsory deposit 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. In that case, the insolvent had handed over his provident fund deposit to his wife; and it was held dissenting from the Bombay decision, and following the decisions in *Official Assignee of Madras* v. *Mary Dalgairns*[3] and *Hindley* v. *Joynarain Marwari*,[4] that such payment being a voluntary transfer cannot prevail against the Official Assignee, and the Official Assignee is entitled to an order against the wife that she should pay down that amount to him.

In *Hindley* v. *Joynarain Marwari*[4] Rankin J. stated that, whether the employee is in the service or out of service, whether he be alive or dead, his share is unattachable in the hands of the institution. It is further pointed out by Rankin J. in that case that the difference between sub-section (*1*) and sub-section (*2*) is that the first does not go as far as the second. We are in entire agreement with these observations; and it is not necessary for us to refer to the provisions of sub-section (*1*) and sub-section (*2*) of section 3 of the Act, which make a difference between the position in the case of the amount in the fund during the life-time

[1] (1919) 44 Bom. 673.
[2] [1931] A. I. R. Mad. 797.
[3] (1902) 26 Mad. 440.
[4] (1916) 46 Cal. 962.

of a subscriber himself, and the character of it after his death.

I think, therefore, the decree of the lower Courts must be reversed. But, as the appeal was summarily dismissed by the learned District Judge, we must remand the case back to him for disposal on the merits of the appeal.

Costs will be costs in the appeal.

DIVATIA J. I agree.

Decree reversed.

Y. V. D.

APPELLATE CIVIL.

FULL BENCH.

Before Sir John Beaumont, Chief Justice, Mr. Justice Murphy and Mr. Justice N. J. Wadia.

HEMRAJ DATTUBUVA MAHNUBHAO (ORIGINAL PLAINTIFF), APPELLANT *v.* NATHU AND OTHERS, MINORS BY THEIR GUARDIANS TRUSTEES MEGHASHAM SHIVRAM MAHAJAN AND TOTARAM KESHAV PATIL, ALL HEIRS OF THE DECEASED RAMU GANPAT MAHAJAN (ORIGINAL DEFENDANT'S HEIRS), RESPONDENTS.*

1935 *February* 1

Hindu Law—Minor—Sale by guardian of minor's property—"Benefit of the estate", meaning of.

The manager of a minor under Hindu law is not entitled to sell the minor's property merely for the purpose of enhancing the value of the property, or for increasing the minor's income.

At the same time it would not be accurate to say that no transaction can be for the benefit of the minor which is not of a character to protect or preserve the property of the minor.

The sale of land which cannot conveniently be cultivated with other property of the minor, and the investment of the purchase money in lands which could be so conveniently cultivated; or the sale of lands in order to raise money to secure irrigation or permanent improvement of the other lands of the minor; or a beneficial exchange; or a sale in order to prevent destruction of the minor's property are transactions which would be for the benefit of the estate.

The mother and guardian of a Hindu minor sold for Rs. 900 a small strip of land normally worth not more than Rs. 600. The purchase money was invested by the mother in the money-lending business which had been carried on by the minor's father

* Second Appeal No. 240 of 1931.