

ORIGINAL CIVIL.

Before Mr. Justice Harington.

SETH MANNA LAL PARRUCK

v.

GAINSFORD.*

1908

Mar. 3.

Attachment—Provident Fund of Corporation of Calcutta—Subscriptions—Calcutta Municipal Act (Bengal Act III of 1889) sec. 73(c)—Provident Funds Act (IX of 1897) secs. 2(4), 4, 6—Provident Funds (Amendment) Act (IV of 1903) sec. 2—“Compulsory deposits”—Trustees.

The Provident Fund established by the Municipal Corporation of Calcutta is governed by the provisions of the Provident Funds Act of 1897 and the Provident Funds (Amendment) Act of 1903.

These Acts render any subscriptions to the Fund in the hands of the Trustees of the Fund not liable to attachment.

THIS was an application on behalf of the Trustees of the Provident Fund of the Corporation of Calcutta created under the Calcutta Municipal Act for a declaration that the sum of Rs. 6,000 to the credit of the defendant Gainsford in the Fund, was not liable to attachment, and for an order that a previous order of June 25th 1907, directing such attachment, be vacated or modified.

On the 9th January 1907 this suit was instituted by the plaintiff against the defendant Gainsford, who was the Secretary of the Corporation of Calcutta and another, for the recovery of the sum of Rs. 3,513 and interest due on their joint and several promissory note dated December 14th, 1905.

A rule was obtained by the plaintiff calling upon Gainsford to show cause, why he should not furnish security to satisfy any decree that might be passed against him in the suit and why in default thereof the sum of Rs. 6,000 payable to him out of the Provident Fund created under section 73(c) of the Calcutta Municipal Act should not be attached, until the final determination of the suit, and it was further ordered, that until such cause be shown, the Trustees of the Fund be prohibited and restrained

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from making payment of the sum to any person whomsoever. The Trustees were not parties to the rule and did not appear at its disposal.

No cause was shown by Gainsford and on the 25th June 1907, the order was made *ex parte* against Gainsford and it was further ordered that the Trustees be prohibited and restrained from making payment of the sum to Gainsford or to any other person.

This order was duly served on the Trustees by the Sheriff of Calcutta on the 11th July 1907, and thereupon the Trustees proceeded to make the present application.

It was contended by the Trustees in their petition that the Provident Fund was established under the provisions of section 73(c) of the Calcutta Municipal Act of 1899 for the benefit of the officers and servants of the Corporation and that rules were framed as empowered by that section for the regulation of that Fund. Rule 23 was as follows: "No subscriber shall be entitled to transfer or assign whether by way of security or otherwise, howsoever, his share or interest in the Fund, or any part thereof and no such transfer or assignment shall be valid, and the Managers, Trustees or General Committee shall not recognize or be bound by notice to them, respectively, of any such transfer or assignment and all moneys standing in the books of the fund to the credit of the subscriber so transferring his interest as aforesaid, shall forthwith be forfeited as from the date of such transfer or assignment, to the use of the fund, and be dealt with accordingly, and further, if any prohibitory order, or attachment, or process of a Civil Court be served upon the Managers, Trustees, General Committee or Corporation or any of them, or any person on their behalf, by which any moneys standing to the credit of any subscriber in the books of the fund shall be attached, or be ordered to be paid into a Civil Court, or be ordered to be withheld from such subscriber, such moneys shall forthwith be forfeited to the use of the fund, and be dealt with accordingly"

They alleged that the defendant Gainsford as Secretary of the Corporation used to contribute to the Provident Fund under and subject to the Rules, until the 28th June 1907, when he resigned his appointment.

It was also contended that in exercise of the powers vested in the Government of India under section 6 of the Provident Funds Act, 1897, the Government by a notification, dated the 8th July 1902 and duly published in the *Gazette of India* on the 12th July 1902, extended the provisions of the Provident Funds Act, 1897, to the Provident Fund of the Corporation of Calcutta.

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Section 4 of the Provident Funds Act, 1897 is 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."

The Trustees submitted that, as well by rule 23 set out above as by Section 4 of the Provident Funds Act, 1897, the sum of Rs. 6,000 to the credit of Gainsford in the Provident Fund of the Corporation of Calcutta, was exempt from attachment.

It is to be observed that section 2 of the Provident Funds (Amendment) Act, 1903, reproduces *verbatim* the provisions of section 4 of the Act of 1897 adding two sub-sections, which do not affect the present application.

Mr. Sinha for the Trustees. By section 4 of the Provident Funds Act, 1897 and section 2 of the Provident Funds (Amendment) Act, 1903, both of which Acts govern the Provident Fund of the Corporation of Calcutta, compulsory deposits in that Fund are rendered not liable to attachment. The definition of "compulsory deposits" in section 2 of the Act of 1897, covers such contributions as Gainsford's. See *Veerchand Nowla v. B. B. & C. I. Railway Company*(1). Further under rule 23 of the Rules and Regulations framed by the Calcutta Corporation under the power granted by section 73(c) of the Calcutta Municipal Act, 1899, on any order of attachment being served on the Trustees in respect of any moneys standing to the credit of any subscriber,

(1) (1904) I. L. R. 29 Bom. 259.

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such moneys are forthwith forfeited to the use of the Fund. Thus the sum of Rs. 6,000 was forfeited.

Mr. B. C. Mitter, for the plaintiffs. The application was misconceived. The trustees should have instituted a separate suit to enforce whatever rights they laid claim to. *Mussamut Rambutty Kooer v. Kamessur Pershad*(1), and *Basavayya v. Syed Abbas Saheb* (2), were referred to. Further, there was nothing to show that the contributions made by Gainsford were "compulsory deposits" within the meaning of the Provident Funds Act, 1897, section 2.

Mr. Sinha, in reply. See the Full Bench case of *Chidambara Patter v. Ramasamy Patter* (3), dissenting from the decision in *Basavayya v. Syed Abbas Saheb*(2).

HARINGTON J. This is an application made on behalf of the Trustees of a Provident Fund, created by the Calcutta Municipal Corporation, for an order that it may be declared that a sum of Rs. 6,000 payable to one Gainsford is not liable to attachment.

It appears that an action was brought against Gainsford and another man, in which the plaintiff obtained an order calling upon Gainsford to show cause, why the sum of Rs. 6,000 payable to him out of the Municipal Provident Fund should not be attached. I gather from what has been stated in the arguments that no cause was in fact shown; the present trustees were not parties to the rule and did not appear and the order was made *ex parte* against Gainsford and the order prohibited the trustees from paying this sum of Rs. 6,000 either to Gainsford or to any other person; on receiving notice of that order the trustees come forward with the present application, the object of which is to remove that prohibitory order on the ground that the sum in question is not liable to be attached.

Mr. Sinha, who appears for the applicants, rests his contention on two grounds. The first is that by virtue of the Statute law deposits in the Calcutta Municipal Provident Fund cannot be attached, and secondly, that under the rules, under which this

(1) (1874) 22 W. R. (C. R.) 36.

(2) (1900) I. L. R. 24 Mad. 20.

(3) (1903) I. L. R. 27 Mad. 67.

Fund is regulated, when a notice of attachment is served on the trustees, then the money standing to the credit of the subscriber, against whom the attachment is issued, is *ipso facto* forfeited to the use of the Fund. Mr. Mitter for the plaintiff first objects that the applicants are not entitled to appear. I confess I do not accede to that argument. The Fund is in the hands of the applicants. There is a Regulation, under which the applicants would be entitled under certain circumstances to refuse to pay that fund to Gainsford and to deal with it as provided under Rule 23. I fail to see why the applicants should be debarred from asserting any claim that the trustees may have to this Fund as claimants to a fund which has been improperly attached to answer the debt of Gainsford.

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It is a case in which the present claimants do not assert their claims as trustees for Gainsford, but as trustees for other persons, who became entitled on service of notice of attachment of the property, to which Gainsford might have otherwise been entitled. In my opinion, to these funds the trustees are as much entitled to assert their claim under the claim sections of the Code, as any other person claiming to be entitled to the Rs. 6,000—fund in question.

Then the other argument, on which Mr. Mitter relies on the merits, is that the Act, on which Mr. Sinha relies, does not apply to the present fund, because he says it applies to compulsory deposits and that there is nothing in the affidavit to show that this was not a voluntary deposit by Gainsford; moreover the Regulations, by which the fund is governed, show there were two kinds of deposits, that is compulsory and voluntary deposits.

Now paragraph 6 of the affidavit sets out that Gainsford used to contribute to the fund under the rules and regulations, to which the affidavit refers. These rules and regulations in clause 5 contain a reference to a compulsory contribution of a sum equal to 5 per cent. on the amount of the salary of the subscriber; they also provide in sub-clause 2 that any subscriber may contribute by monthly instalments such further sum as he may think proper, provided that the total amount thus voluntarily contributed in any one year does not exceed 5 per cent. of his salary for such year. But both what is called a compulsory subscription, under

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the Rules, and a voluntary subscription, are subject to the Rules and Regulations as to management of the fund.

The expression "compulsory deposit" is defined in the Provident Fund Act (Act IX of 1897) and under section 2, sub-section 4, a "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.

These payments made by Gainsford, whether they are described under the rules as voluntary or compulsory, or both, come within the definition given in section 2, sub-section 4 of the Act, which I have just read. In my opinion, therefore, they are governed by that Act and by the amending Act, namely Act IV of 1903.

It should be observed that these Acts do not of their own force apply to the fund, which is now the subject-matter of the present application, but a notification was made on the 8th July 1902, under section 6 of the Provident Funds Act, extending the provisions of the Act to the Provident Fund established by the Corporation of Calcutta, that is to say, extending it to the present Fund. That Act having been extended, the amending Act (Act IV of 1903) applies, and by section 2 of that Act the compulsory deposits are made "not liable to any attachment under any decree or order of a Court in respect of any debt or liability incurred by a subscriber to, or depositor in, any such Fund and neither the Official Assignee nor a receiver appointed under Chapter XXII of the Civil Procedure Code shall be entitled to or have any claim on any such compulsory deposit."

The effect of these Acts is in my opinion to prevent the Fund in the hands of the trustees being subject to attachment in respect of the debt by Gainsford to the person, who is the plaintiff and the result is, therefore, I think, this application must be allowed and the attachment removed.

I desire to add that it has been stated that the notification, which extended these Acts to the particular fund in question, was not brought to the notice of the Court, when the order for

attachment was made. It is stated at the Bar that a search was made, but by some accident the existence of the notification was not discovered, the consequence was that it was not brought to the notice of the Court and I have very little doubt that, if it had been brought to the notice of the Court, the order for attachment would never have been made.

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As it is my view that the Statutes, to which I have referred, affect the fund in question, it becomes unnecessary to discuss the questions raised by Mr. Mitter as to the construction of the rules. The application for an order directing that the sum is not liable to be attached must be allowed with costs.

Application allowed.

Attorney for the applicants: *M. L. Sen.*

Attorney for the opposite party: *B. S. Ghosh.*

J. C.