IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10377 of 2020

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RAJNIKANT PUNJALAL SHAH KARTA OF RAJNIKANT PUNJALAL SHAH HUF

Versus

MANAGER, BANK OF BARODA

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Appearance:
ADITYA A GUPTA(7875) for the Petitioner(s) No. 1
MOHIT A GUPTA(8967) for the Petitioner(s) No. 1
MR AR GUPTA(1262) for the Petitioner(s) No. 1
MS NEETA A PANDIT(5952) for the Petitioner(s) No. 1
MS NALINI S LODHA(2128) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 23/06/2022
ORAL ORDER

1. Rule. Learned advocate Ms.Nalini Lodha waives service of notice of rule for and on behalf of the respondent-Bank.

2. The Brief facts of the case are as under:

2.1 The petitioner was holding a Public Provident Fund (PPF) Account No.469 under the Public Provident Fund Scheme, 1968 with the respondent-Bank in the name of Rajnikant Punjalal Shah Hindu Undivided Family (HUF). The petitioner was investing HUF's money in the said account. The petitioner is a partner of Gujarat Steel & Pipes – Partnership Firm and the said firm was also holding a Cash Credit Account No.29760500000019 with the respondent-Bank. It is the case of the petitioner that both the accounts do not have any

interconnection as the PPF Account is opened with the Central Government through the respondent, while Cash Credit Account is maintained and held with the respondent.

3. Learned advocate Mr.Aditya Gupta appearing for the petitioner has submitted that the Government of India vide notification being Public Provident Fund Scheme, 2019 dated 12.12.2019 under Section 15 of the Public Provident Fund Act, 1968 has clarified that the amount standing in the PPF Account shall not be liable to any attachment in respect of any debt or liability incurred by the account holder hence, the PPF account is protected against any kind of recovery, debt etc.

3.1 It is submitted that due to the pandemic situation and economic condition of the petitioner and other coparceners of the HUF required the fund urgently and, therefore, wanted to withdraw the fund lying in the PPF Account and thus, the petitioner approached the respondent Bank to withdraw the amount of the PPF Account on 26.06.2020. Learned advocate has submitted that the respondent Bank has illegally and without the consent of the petitioner debited the amount of Rs.85,380/- from his PPF Account to Cash Credit Account of his partnership firm.

3.2 Learned advocate Mr.Gupta has submitted that the action of the respondent Bank of debiting the aforesaid amount from the PPF Account of the petitioner is illegal and *de hors* the procedure prescribed in law. He has placed reliance on Section 60(1) of the Civil Procedure Code, 1908(the CPC), which provides for the properties liable to be attached. He has submitted that Section 60(1) Clause (a top) provides for the properties, which are not liable to be attached and Clause (ka) to the proviso of Section 60 of the CPC states that *"all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment."*

3.3 He has further placed reliance on the judgement of Division Bench of this Court rendered in the case of *Dineshchandra Bhailalbhai Gandhi Vs. Tax Recovery Officer*, 2014 S.C.C. OnLine Gujarat 15889. The Division Bench of this Court in the said judgement has held thus:

> *"7. The Scheme is framed under the Public Provident Fund Act, 1968. The statement of objects and reasons for enactment of the Act state inter alia that the object of the bill is to provide for the institution of a Provident Fund for general public. The fund is meant to be a medium for long term savings for individuals. With such object in mind, the Public*

Provident Fund Act was enacted. Section 3 of the PPF Act, 1968 provides for framing of the Public Provident Fund Scheme. Sub-section (1) of Section 3 provides that the Central Government may, by a notification in the official Gazette, frame a scheme to be called the Public Provident Fund Scheme for the establishment of a provident fund for the general public and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

8. Section 4 of the PPF Act, 1968 provides that any individual may, on his own behalf or on behalf of a minor, of whom he is the guardian, subscribe to the Fund in such manner and subject to such maximum and minimum limits as may be prescribed in the Scheme. Section 5 pertains to interest to be paid on such subscriptions. Section 6 pertains to withdrawals which may be permitted to the extend and subject to terms and conditions as may be specified. Section 9, which is important for us, reads as under :-

> *"9. Protection against attachment — The amount standing to the credit of any subscriber in the Fund shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the subscriber."*

9. From the provisions of the PPF Act, 1968 it can be seen that the same is a benevolent statute and envisages creation of an institution of the Provident Fund for the general public, for the purpose of a medium for long term savings for individuals. The Act envisages framing up of a Public Provident Fund Scheme and creation of a fund in accordance with the provisions of the Act and the Scheme. The Act contains provisions for the subscription to the fund and interest to be paid on the subscriptions. It also controls the withdrawals and granting of loan against the amount standing to the credit of a subscriber in the Fund. Section 9 of the PPF Act, therefore, has to be seen in the background of such benevolent provisions. The provision of the PPF Act, 1968 seen in light of the PPF Scheme would demonstrate that the withdrawals and loans against the amount lying in the account of a subscriber are controlled thereby encouraging long term savings for an individual and discouraging withdrawals intermittently and pre-maturely. It can thus be seen that the PPF Scheme

which covers all individuals whether employed in the public sector or not or covered under the labour welfare legislations or not. In essence, therefore, even for individuals not covered by the public employment and therefore enjoying contributory provident fund or pension scheme or organized sector, and therefore, covered under the labour welfare schemes, provides for a social security and a fund to depend upon in old age; post-retirement.

10. In case of Union of India v. Radha Kissen Agarwalla & Anr., reported in AIR 1969 SC 762, in the context of Railway Provident Fund created under the Provident Funds Act, 1925, the Apex Court observed that the Union of India was a trustee for the subscriber of the money. When the amount lying with the Reserve Bank as an agent of the Railway administration was attached, the Union had clearly an interest to maintain the application for removal of the attachment. With such observation, the order of attachment of the amount by the Railway Administration was held to be contrary to Section 3 of the PPF Act, 1925. We may refer to Section 3 (1) of the PPF Act, 1925 which provides, inter alia, that, "..A compulsory deposit in any Government or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such compulsory deposit."

11. The decision in case of Union of India v. Radha Kissen Agarwalla & Anr. [Supra] was reiterated in case of Union of India v. Jyoti Chit Fund and Finance & Ors., reported in AIR 1976 SC 1163. Here also, the Court was considering Section 3 of the PPF Act, 1925. Referring to clause (k) of Section 60 of the Code of Civil Procedure, the Court observed that so long as the amounts are provident fund dues, pensions and other compulsory deposits then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise, the nature of the dues is not altered. The government is a trustee for those sums and has an interest in maintaining the objection in court to attachment.

12. At this stage, we may refer to Rule 10 of Schedule-II to the Income-tax Act, 1961. The second schedule pertains to procedure for recovery of tax. Rules contained in the schedule make detailed provisions and the manner in which tax dues of the department could be recovered from the debtors. Rule 10 thereof reads as under :-

> *"10. Property exempt from attachment:*
>
> *(1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.*
>
> *(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive."*

*13. *** *** ****

14. In turn, if one peruses Section 60 of the Code of Civil Procedure, it pertains to property liable to attachment and sale in execution of decree. Subsection (1) of Section 60 lists the properties which shall be liable to attachment or sale. Proviso to section 60(1) contains list of properties which shall not be liable to attachment or sale. Clause (ka) thereof reads as under :-

"(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment."

15. To our mind, three provisions noted above, namely, Section 9 of the PPF www.taxguru.in C/SCA/1 1575/2005 JUDGMENT Page 9 of 10 Act, 1968 Rule 10 of Schedule-II to the Income-tax Act, 1961 and clause (ka) to the proviso to Section 60(1) of the Code of Civil Procedure complete a full circuit, making any amount lying in the public provident fund of a subscriber immune from attachment and sale for recovery of the income tax dues. We may recall that Rule 10 of Schedule-II to the Income-tax Act, 1961 exempts all such properties as by the Civil Procedure Code are exempted from attachment and sale in execution of a decree of a civil court from

attachment and sale under the said schedule. In turn, clause (ka) of the provision to Section 60 (1) of the Code of Civil Procedure provides that all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 applies in so far as they are declaring by the said Act not to be liable to attachment, shall not be liable for attachment or sale under the Code. This brings us right back to Section 9 of the PPF Act, 1968 which provides that the amount standing to the credit of any subscriber shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the subscriber."

3.4 Thus, it is submitted that the respondent Bank may be directed to refund the amount of Rs.85,380/- withdrawn from the provident fund account of the petitioner.

4. Per contra, learned advocate Ms.Nalini Lodha appearing for the respondent Bank has submitted that the action of the respondent is justified and hence, no orders may be passed. She has submitted that the respondent Bank was forced to undertake the necessary action for withdrawal of the amount of PPF Account since the bank, along with the partners of the firm and others in their personal and individual capacity, executed General Form of Guarantee on 03.05.2018 for Rs.24,00,00,000/- and the petitioner, alongwith other guarantors, are liable to pay the entire debt due to the respondent Bank. Thus, she has submitted that the action of the respondent Bank withdrawing the provident fund amount may not be set aside.

5. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

6. It is not in dispute that the respondent Bank have withdrawn/debited the aforesaid amount of Rs.85,380/- from the PPF Account of the petitioner. It is well settled proposition of law that the amount of Public Provident Fund account shall not be liable to any attachment in respect of any debt or liability incurred by the account holder. Thus, the action of the respondent Bank of withdrawing/debiting the aforesaid amount from the PPF Account of the petitioner is illegal and unjustified.

7. Under the circumstances, the respondent Bank is directed to deposit the amount of Rs.85,380/- within a period of four weeks in the Savings Bank Account No.29760100019545 in the name of Rajnikant Punjalal Shah HUF with the Bank of Baroda, Law Garden Branch, Ahmedabad. It is clarified that the observations made by this Court may not be construed adverse to the respondent Bank in any other proceedings.

8. The present writ petition stands allowed. Rule made absolute.

Sd/-
(A. S. SUPEHIA, J)

NVMEWADA