

## Attachment of Salary — A Mathematical Interpretation to Section 60(1)(i) of the Code of Civil Procedure

Attachment of Salary — A Mathematical Interpretation to Section 60(1)(i) of the Code of Civil Procedure

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Cite as: (2011) PL March. S-44 Section 60(1)(i) of the Code of Civil Procedure, 1908 states:

60. (1)(i) salary to the extent of 1[the first 23[ [one thousand rupees]] and two-thirds of the remainder] 4[in execution of any decree other than a decree for maintenance]:

5[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree;]

The interpretation of Section 60(1)(i) given by courts in various judgments revolves predominantly around; what is salary, what constitutes a part of salary, how much exemption a judgment-debtor will get and so on. However, there have been hardly any precedents which provide for the calculation of the amount of salary with regard to attachment since the inception of the Code of the Civil Procedure, 1908.

Salary represents the total monthly remuneration received by an employee for service rendered. If a part of such salary is deducted by the employer and held in deposit for the purpose of meeting the dues of the employee's creditors, the sum made up of such deductions cannot be held to represent the salary of employee.<sup>6</sup> Daily allowance of a servant forms part of his salary.<sup>7</sup> So also dearness allowance and house rent allowance of an employee of Life Insurance Corporation of India form a part of his salary.<sup>8</sup>

It was held in *Kashi Prosad v. A.A. Dâ€™Cruz*,<sup>9</sup> where the salary of a judgment-debtor having been under continuous attachment for 24 months, has become finally exempt from attachment under the proviso to the clause, the decree-holder cannot be allowed to execute the decree and reach the salary of the judgment-debtor by appointment of a Receiver over the salary.

Calculation of attachment amount (out of salary) I. Where the salary is fixed throughout

A. When there is one and the same decree

Let us say salary is `7000 per month (hereafter p.m.)

Part I Salary to the extent of first `1000 is not liable to attachment â€™ `7000 â€™ 1000 = `6000.

Then again 2/3rd of the remainder is also not liable to attachment â€™ `6000 x 2/3 = `4000.

So, total amount liable to attachment is `7000 â€™ 1000 â€™ 4000 = `2000.

Now `2000 has been attached for twenty-four months after that `2000 is exempted as per the second part of proviso to Section 60(1)(i), which states that,

where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree;

Part II Here `2000 has been exempted, so the basic salary for the purpose of calculation of attachment is now `5000 p.m. i.e. `7000 (initial salary) â€™ `2000 (exempted amount) = `5000 p.m.

Now, the issue is from which period new calculation will start i.e. either immediately after a total period of twenty-four months or after the expiry period of twelve months. Let us say for example, the period of attachment starts on 1-1-2000 and on 31-12-2001 i.e. a period of twenty-four months. So the issue is what will be the date for fresh/new calculation i.e. either on 1 1 2002 or 1-1-2003 (as per the provision i.e. until the expiry of a further period of 12 months).

Part III Now the revised/new salary is `5000 p.m. So, salary to the extent of the first `1000 is not liable to attachment â€™ `5000 â€™ 1000 = `4000.

Then again 2/3rd of the remainder is also not liable to attachment â€™ `4000 x 2/3 = `2667.

So total amount liable to attachment is `5000 â€™ 1000 â€™ 2667 = `1333.

Part IV Now the new/revised salary for calculation of attachment amount will be `5000 â€™ 1333 = `3667 p.m.

This process will continue until the value of salary of judgment-debtor reaches up to `1000 p.m. or the decree-holder's claim is fully satisfied. It should be noted that, this method of calculation is apt only when there is execution of one and the same decree is there.

It was held by the Hon<sup>ble</sup> Andhra Pradesh High Court in Shaik Noorjahan v. M. Rajeswari<sup>10</sup> that, after completion of the twenty-four months of attachment, again attachment of salary for the second time, in the very same decree is not permissible. The view taken by the Court in this judgment does not show the correct intention of the legislature. On a close evaluation of this case, it is opined that the decree-holder will never be able to satisfy his claim as per this interpretation. The probable interpretation has been reflected above, which will rather be just for both the parties.

#### B. When there are two different decrees Part I

Let us say salary is `7000 p.m. Date of calculation of attachment is 1 1 2005.

Salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `7000  $\hat{€}$  1000 = `6000.

Then again 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `6000  $\times$  2/3 = `4000.

So total amount liable to attachment is `7000  $\hat{€}$  1000  $\hat{€}$  4000 = `2000.

Now `2000 has been attached for twenty-four months i.e. up to 31 12 2006 (provided that where any part of such portion of the salary as is liable to attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment, until the expiry of a further period of twelve months).

Part II For next twelve months for which the attachment amount is exempted i.e. from 31-12-2006 to 31-12-2007. So for the purpose of calculating the attachment amount for the period i.e. from 1-1-2007 to 31-12-2007, `5000 will be considered as salary out of which the attachment amount will be calculated. (As `2000 has been exempted for the period of twelve months.)

Now the salary for 1-1-2007 to 31-12-2007 is `5000 p.m.

Salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `5000  $\hat{€}$  1000 = `4000.

Then again 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `4000  $\times$  2/3 = `2667.

So total amount liable to attachment for the period 1-1-2007 to 31 12 2007 is `5000  $\hat{€}$  1000  $\hat{€}$  2667 = `1333.

It was held by the Hon<sup>ble</sup> Bombay High Court in Bapu Gadgil v. Rama,<sup>11</sup> that on reading proviso in its totality, it appears that salary portion liable to attachment in execution of a decree is attachable for a period of twenty-four months continuously or intermittently; in execution of one and the same decree. For a gap of twelve months, such portion of salary is totally exempt from attachment by anybody and is applicable for execution of a different decree. This portion of salary would again be liable for attachment after a time gap of twelve months, but for the purpose of execution of a different decree and not for one and the same decree for the purpose of execution of which it was already attached for a period of twenty-four months earlier. The difficulty which the party is bound to face according to the interpretation laid down in this judgment is with regard to the fact as to what will be the appropriate sum on which the attachment amount will be calculated for twelve months followed by a period of twenty-four months. Another obstacle which the party might face the question as to how the judgment-debtor would claim the exemption for such period of twelve months.

Part III The attachment amount will be calculated as `7000 (since the attachment amount was `2000 which was exempted for twelve months only, so thereafter it will again form as part of the salary) for the period i.e. 1 1 2008 to 31-12-2009 for two years and the attachment amount will be exempted for the period of twelve months again. The same process will be repeated until the decree-holder's claim is satisfied.

The method for calculating the attachment amount above can solve almost all the difficulties. However, the real problem will arise when the salary of the judgment-debtor is fluctuating in such circumstances, what would be the appropriate method for calculation of attachment of salary?

One of the methods for calculation of attachment of salary is provided below.

II. When the salary is fluctuating A. Where there is one and the same decree Let us say salary is `7000 p.m. Date of calculation of attachment is 1 1 2008.

Salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `7000  $\hat{€}$  1000 = `6000.

Then again, 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `6000  $\times$  2/3 = `4000.

So total amount liable to attachment is `7000  $\hat{€}$  1000  $\hat{€}$  4000 = `2000 p.m.

Let us assume that salary got enhanced by `3000 i.e. from `7000 to `10,000 on 1-7-2008.

Now, the salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `10,000  $\hat{€}$  1000 = `9000.

Then again 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `9000  $\times$  2/3 = `6000.

Thus, total amount liable to attachment is `10,000  $\hat{€}$  1000  $\hat{€}$  6000 = `3000 p.m. till 31-12-2009.

Where there is attachment of one and the same decree, how much amount will finally be exempted?

There is a possibility that in order to find out the attachment amount we should take average of attachment amount i.e.  $(2000 \times 6 + 3000 \times 18)/24 = `2750$ .

This process will continue until the value of salary of judgment-debtor reach up to `1000 or the decree-holder's amount which is due is fully satisfied. B. Where there are two or more decrees Let us say salary is `7000 p.m. Date of calculation of attachment is 1 1 2008.

Salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `7000  $\hat{€}$  1000 = `6000.

Then again, 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `6000  $\times$  2/3 = `4000:

So, total amount liable to attachment is `7000  $\hat{€}$  1000  $\hat{€}$  4000 = `2000 p.m.

Let us assume that salary got enhanced by `3000 i.e. from `7000 to `10,000 on 1-7-2008.

Now, salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `10,000  $\hat{€}$  1000 = `9000.

Then again, 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `9000  $\times$  2/3 = `6000.

So, total amount liable to attachment is `10,000  $\hat{€}$  1000  $\hat{€}$  6000 = `3000 p.m.

Again salary got enhanced by `3000 i.e. from `10,000 to `13,000 on 1 4 2009.

Now, salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `13,000  $\hat{€}$  1000 = `12,000.

Then again, 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `12,000  $\times$  2/3 = `8000:

So, total amount liable to attachment is `13,000  $\hat{€}$  1000  $\hat{€}$  8000 = `4000 p.m.

So as per provision, attachable amount should be exempted from attachment until the expiry of further period of twelve months. So, (`2000 p.m. is attachable for the period 1-1-2008 to 30-6-2008 i.e. `2000  $\times$  6 = `12,000) + (`3000 p.m. is attachable for the period 1-7-2008 to 31-3-2009 i.e. `3000  $\times$  9 = `27,000) + (`4000 is attachable for the period 1 4-2009 to 31-12-2009 i.e. `4000  $\times$  9 = `36,000).

So, total attachable amount liable for exemption from attachment for the period of twelve months  $\hat{€}$  `(12,000 + 27,000 + 36,000)/24 = `3125 p.m.

So, total amount liable for exemption for 12 months is `3125 p.m.

Now the salary is `13,000 for further period i.e. from 1-1-2010 unless it gets increased (in case if the salary gets enhanced then the attachment amount will be calculated on the basis of new salary). So, calculation for 1 1-2010 to 31-12-2010 will be calculated as follows:

Salary is `13,000 and the total amount which is entitled to be exempted is `3125, so net salary for calculation of attachment amount is `13,000  $\hat{€}$  3125 = `9875.

Now, salary to the extent of first `1000 is not liable to attachment  $\hat{€}$  `9875  $\hat{€}$  1000 = `8875.

Then again, 2/3rd of the remainder is also not liable to attachment  $\hat{€}$  `8875  $\times$  2/3 = `5917.

So, total amount liable to attachment  $\hat{€}$  `9875  $\hat{€}$  1000  $\hat{€}$  5917 = `2958 p.m. i.e. for the period 1-1-2010 to 31-12-2010.

Then again, the attachment amount will be calculated on `13,000 or on revised/new/enhanced salary for the next two years i.e. from 1-1-2011 to 31 12-2012 in the same manner as mentioned above. This process will continue until the dues of the decree-holders get satisfied. Whether employee stock option plan (ESOP) will be considered as income under the head of salary? It was held by the Hon $\hat{€}$ ble Supreme Court in CIT v. Infosys Technologies Ltd.<sup>12</sup>,  $\hat{€}$  In the absence of legislative mandate a potential benefit could not be considered as  $\hat{€}$  income  $\hat{€}$  of the employee(s) chargeable under the head  $\hat{€}$  salaries  $\hat{€}$ . As it  $\hat{€}$  a plan established and maintained by an employer to provide for the participation in profits of the company by the employees or their beneficiaries. So ESOP will not be considered as a part of salary for the purpose of attachment.

**Conclusion** It is strongly suggested that the Indian judicial system should provide apt and suitable ways for calculating the attachment amount, so that the decree holder's claim is satisfied properly, keeping in mind that equal protection is also meted out to the judgment-debtor as provided in Section 60(1)(i). The protection guaranteed by Section 60(1)(i) will be futile if there will be no method provided for the purpose of calculating the attachment amount.

Though this article reflects the mathematical interpretation in accordance with Section 60(1)(i) as well as the suggested solution for the same, it is concluded that the suggested solution is the most appropriate mathematical interpretation which will bring out the true purpose of the relevant section.

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- Substituted by Act 26 of 1963, Section 2 for  $\hat{€}$  the first hundred rupees  $\hat{€}$ .
- Substituted by Act 104 of 1976, Section 23 for  $\hat{€}$  two hundred rupees and one-half the remainder  $\hat{€}$  (w.e.f. 1-2-1977).
- Substituted by Act 46 of 1999, Section 6 for  $\hat{€}$  four hundred rupees  $\hat{€}$  (w.e.f. 1-7-2002).
- Inserted by Act 66 of 1956, Section 6 (w.e.f. 1-1-1957).
- Substituted by Act 104 of 1976, Section 23, for the proviso (w.e.f. 1-2-1977).
- Divisional Accounts Officer v. Radha Kissen Khaitan, AIR 1959 Cal 666.
- Gangodhara Menon v. Govt. of Kerala, 1963 KLT 392.
- Bhanwarlal v. Bhairulal, (1974) 1 WLN (UC) 167.
- AIR 1958 Cal 19, 21.
- AIR 2010 AP 207, 209, para 9.
- (2003) 1 All MR 726.
- (2008) 2 SCC 272, 279, para 17.