

1970 Present : Siva Supramaniam, J., and Samerawickrame, J.

A. R. F. LOUIS, Appellant, and AGNES EMMANUEL,  
Respondent

*S. C. 172/68 (Inty.)—D. C. Colombo, 5755/D*

*Matrimonial action—Execution of decree awarding alimony—Right of wife to seize salary and allowance of husband—Civil Procedure Code, as amended by Act No. 5 of 1964, ss. 217, 217A, 218 (m), 596, 615 (1), 615 (2), 624.*

Section 218 (m) of the Civil Procedure Code, as amended by Act No. 5 of 1964, does not deprive a wife of her right to seize the salary and allowance of her husband in execution of a decree for alimony in her favour. The exemption under section 218 (m) applies only to seizures under writs issued in execution of decrees in ordinary civil actions and cannot have application to orders for maintenance made under section 615 (2) of the Civil Procedure Code.

*De Jonk v. De Jonk* (72 N. L. R. 141) not followed.

**A**PPEAL from an order of the District Court, Colombo:

*C. Chellappah*, with *J. R. M. Fernandopulle*, for the plaintiff-appellant.

*D. R. P. Goonetilleke*, for the defendant-respondent.

*Cur. adv. vult.*

March 12, 1970. SIVA SUPRAMANIAM, J.—

This is an appeal from an order of the District Judge of Colombo refusing to release from seizure a sum of money which forms part of the appellant's salary and allowance that had been seized by the Fiscal in the hands of the appellant's employer, in execution of a writ issued at the instance of the respondent in this case.

This was an action in which a decree for divorce was granted in favour of the respondent who was the wife on the ground of malicious desertion on the part of the appellant. The Court made a further order under section 615 (2) of the Civil Procedure Code directing the appellant to pay to the respondent a sum of Rs. 40 per month for her maintenance and support. The appellant failed to pay this sum for eight months and on the application of the respondent the writ in question was issued by the Court.

The appellant contends that under S. 218 (m) of the Civil Procedure Code, as amended by Act No. 5 of 1964, his salary and allowances are not liable to seizure as the aggregate amount of such salary and allowances does not exceed five hundred rupees per mensem. The learned District Judge held that sections 217 and 218 have no application to the writ issued in this case.

The Civil Procedure Code draws a distinction between "ordinary civil actions" and matrimonial actions. Chapters III to XXI deal with "ordinary civil actions" and Chapter XXII prescribes the procedure to be followed in regard to the execution of decrees in such actions. Chapter XLII prescribes the procedure to be followed in matrimonial actions. Section 596 provides that the procedure generally in matrimonial cases shall, subject to the provisions in Chapter XLII, follow the procedure "herein before set out with respect to ordinary actions". Under section 624, "all decrees and orders made by the court in any action or proceeding under this Chapter shall be enforced . . . in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced."

A decree of the court directing a husband to pay a sum of money weekly or monthly for the maintenance and support of the wife may, therefore, be "enforced in like manner" as a decree to pay money. But it does not follow that the decree itself is one that falls under head (A) of S. 217. S. 217 (A) refers to decrees in ordinary civil actions only.

In granting a creditor, who has a decree in his favour which falls under head (A) of S. 217, the power to seize and sell property belonging to his debtor to secure satisfaction of his debt, the legislature exempted certain types of property from seizure. The exemptions have been designed primarily to ensure that the debtor is not subjected to personal embarrassment or

to hardships and difficulties in earning his livelihood or in maintaining his family. Among the property so exempted, by a subsequent amendment of the section, is the salary and allowances of a debtor who is an employee whose aggregate salary and allowances do not exceed Rs. 500. This exemption was obviously intended to ensure that a creditor did not levy execution in such a way as to render his debtor, his wife and children destitute, and that a debtor who was an employee was left with sufficient means to maintain his wife and children. It would defeat the very object of the exemption if a husband could rely on it to deprive the wife of a sum of money decreed by the court for her maintenance and support.

The exemption under S. 218 (m) will apply only to seizures under writs issued in execution of decrees in ordinary civil actions and cannot have application to orders for maintenance made under S. 615 (2).

Counsel for the appellant invited our attention to the judgment of this Court in *De Jonk v. De Jonk*<sup>1</sup> in which it was held that the exemption under S. 218 (m) applies to a seizure of the salary in execution of an order for alimony. We regret very much that we are unable to agree with that view.

Counsel for the appellant also submitted that the order for alimony in question is not enforceable and cited in support the decision in *Nadarasa v. Navamany*<sup>2</sup>. It was held in that case that where a decree for dissolution of marriage is entered at the suit of a husband, a promise by the husband to make an *ex gratia* payment to the wife cannot be incorporated in the decree so as to compel him to pay the sum. That decision has no application to the facts of this case. In this action, although the appellant instituted the plaint, the dissolution of marriage was granted on the respondent's prayer contained in her amended answer, and the court had power to make an order for permanent alimony under S. 615 (1). The order for maintenance made under S. 615 (2) was therefore a valid one.

We are of opinion that the learned District Judge was right in refusing to release the seizure.

The appeal is dismissed with costs.

SAMERAWICKRAME, J.—I agree.

*Appeal dismissed.*

<sup>1</sup> (1969) 72 N. L. R. 140.

<sup>2</sup> (1962) 64 N. L. R. 232.