

1969 *Present*: H. N. G. Fernando, C.J., and Pandita-Gunawardene, J.

B. A. R. DE JONK, Petitioner, and M. D. DE JONK, Respondent

S. C. 708/68—Application for Revision in D. C. Colombo, 7409/D

Execution of decrees—Matrimonial action—Salary of an employee—Exemption from seizure for alimony—Civil Procedure Code, s. 218 (m).

Section 218 (m) of the Civil Procedure Code, as amended by Act No. 24 of 1961, debars the seizure of the salary of an employee (other than a public officer or servant) in execution of an order for alimony entered against him in a matrimonial action.

¹ (1930) C. P. D. 1. ² Wille: *Principles of S. African Law* (2nd Edition), p. 214.

³ Lee: *An introduction to Roman-Dutch Law* (4th Edition) p. 182.

APPPLICATION to revise an order of the District Court, Colombo.

Siva Rajaratnam, with *C. Chakradaran*, for the defendant-petitioner.

L. A. T. Williams, for the plaintiff-respondent.

May 22, 1969. H. N. G. FERNANDO, C.J.—

In this case writ had issued against the present petitioner for the seizure of his salary in execution of an order for alimony *pendente lite* and of a decree for permanent alimony. The petitioner applied to the District Court for a release of the seizure on the ground that under Section 218 paragraph (m) of the Civil Procedure Code, as amended by Act No. 24 of 1961, the salary and allowances of an employee are exempt from seizure. The learned District Judge refused the petitioner's application on the ground that the provisions of Sections 217 and 218 of the Code do not apply to a decree in a matrimonial action.

Prima facie the provisions of Section 218 do apply in the case of any decree to pay money, and counsel for the respondent in the present application, despite an able argument, could not refer to any authority in support of the Judge's order. We ourselves see no ground upon which to uphold the order.

Counsel has further argued that this application should now not be allowed because the order complained of was itself appealable and no appeal was taken from it.

The delay in the filing of this application has been quite brief and there may well be explicable reasons why the petitioner and his legal advisors were uncertain as to the correctness of the order briefly pronounced by the learned District Judge.

Acting in revision we hold that the order made by the District Judge on 25th September 1968 was illegal and we allow the application of the petitioner dated 18th September 1968 for a direction to the Fiscal to release the seizure. There will be no order for costs in respect either of the application in the District Court or of the present application.

PANDITA-GUNAWARDENE, J.—I agree.

Order set aside