

(1960) 06 MAD CK 0005
In the Madras High Court
Case No : A.A.O. No. 216 of 1959

Alsidass Kaverlal

APPELLANT

Vs

J. Hiriya Gowder

RESPONDENT

Date of Decision : 20-06-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46

Citation : AIR 1961 Mad 189 : (1961) 74 LW 45 : (1960) 2 MLJ 561

Hon'ble Judges : Anantanarayanan, J

Bench : Single Bench

Advocate : M.K. Harihara Iyer, for the Appellant;

Final Decision : Partly Allowed

Judgement

Anantanarayanan, J.—This is an appeal by the petitioner decree-holder against the order of the learned Subordinate Judge, Ootacamund in

an execution application under Order 21, Rule 48 C. P. C. The facts are simple and are as follows:

Originally the appellant (decree-holder) prayed to the court below for the issue of a prohibitory order in respect of certain amounts payable by the

Garrison Engineer, Wellington to the respondent (judgment-debtor), apparently relating to certain contracts for the Army executed by the

judgment-debtor. It is not in dispute before me that this application under Order 21, Rule 46 C. P. C. was perfectly maintainable and in order, and

that it related to the sums payable by the Garrison Engineer to the judgment-debtor upto the date of the application.

As will be clear from a glance at Order 21, Rule 46 C. P. C. that rule applies to attachment of certain kinds of property not in possession of the

judgment-debtor, including a debt not secured by a negotiable instrument (Rule

46(a)) and other moveable property (Rule 46(c)) not in the possession of the judgment-debtor. The present application was clearly under Rule 46(c), as it related to cash payable to the judgment-debtor by the Garrison Engineer. I further agree with the contention of the learned counsel for the appellant (Mr. Alwares) that the application would be equally tenable under Rule 46(a), as this is a case of a debt due by the Army authorities to the judgment-debtor not secured by the Negotiable Instruments Act.

On 8-4-1958, the Garrison Engineer wrote a letter to the Subordinate Judge, Ootacamund, in respect of his prohibitory order, informing the Court that an amount of Rs. 7,237-75 had been withheld in response to the order, that the balance payable, if any, was so far unascertained, and that the military authorities were therefore unable to state that any further specific balance was payable to the judgment-debtor. There is another letter dated 16th May 1958 from the Garrison Engineer, in similar terms, but also intimating the court that "all amounts that become due to the contractor are being kept in deposit (in suspense account), and it has been ensured that no payment is made to Sri J. Nirlya Gowder (judgment-debtor).

2. Now, what seems to have happened after this is that the court, without taking evidence and without any further enquiry, merely confirmed the prohibitory order issued, in respect of the sum of Rs. 7237-75 alone. The decree-holder (appellant" was naturally aggrieved by this, as, in his view nearly Rs. 20,000 was due to the judgment-debtor on the date of the attachment. He filed a fresh application under Order 21, Rule 46 C. P. C. praying for a fresh attachment of bill amounts, deposit amounts etc., totalling to nearly Rs. 20,000.

This application was resisted by the judgment-debtor on several grounds, such as the ground that the decree was barred by limitation, and the ground that it was satisfied by private payments between the parties. These grounds were negatived on the merits. But the court below held, upon the point of maintainability, that no such petition could lie for any amount exceeding the amount of Rs. 7237-75 reported as the ascertained amount by the Garrison Engineer. The court consequently dismissed the application as not maintainable.

3. I find it difficult to follow the reasoning upon which the order of the learned

Subordinate Judge is based. Even taking it that the first prohibitory order was enforced upto the extent of Rs. 7237 odd alone, I find nothing in the processual law to prevent a party situated like the present appellant from applying for a fresh prohibitory order with regard to any balance of monies still payable by the Army Authorities to the judgment-debtor. Again, it is not as if any enquiry or evidence had established that, on the date of the application by the decree-holder, no amount greater than Rs. 7237 odd was payable to the judgment-debtor. That is merely an uncorroborated statement by the Garrison Engineer, upon which there is no evidence whatever. Needless to say, even the letter could not be accepted as evidence and acted upon, until it had been properly proved. As pointed out in Mulla's Civil Procedure Code, 12th Edition page 822, even where a debt is being attached, it is not necessary that the exact amount of the debt should be stated, provided there is a debt actually due at the time of the attachment.

4. This point is covered by authority. As learned counsel for the appellant points out, Order 45, Rule 1 of the Rules of the Supreme Court in the United Kingdom has been framed upon the lines almost identical with our own Order 21, Rule 46 C. P. C. An authority precisely in point, and relating to almost identical circumstances, is *O. Driscoll v. Manchester Insurance Committee*, 1951 3 K. B. 499. What happened in that case was that a panel doctor had done certain work under agreement with an Insurance Committee which had received funds in respect of the medical benefit from the National Insurance Commissioners.

The debt owing to the doctor was actually unascertained, but the court nevertheless held that an attaching creditor could attach this liability under Order 45, Rule 1 of the Supreme Court rules, notwithstanding the fact that the share payable to the judgment-debtor had not been ascertained at all. Again, it seems to me clear that the court would not at all be justified in accepting the bare statement of the garnishee that no debt is due. Under those circumstances, on the contrary, the court must clearly make an enquiry and come to its independent conclusion. For this, proposition, reference might be made to *Moideen Batcha v. Sulaiman Sahib*, 1955 2 M. L. J. 522: (AIR 1956 Mad 163), where Krishnaswami Nayudu, J. held that under the circumstances, the court may even appoint a Receiver in

execution and direct an enquiry, without acting upon the statement of the garnishee.

5. Consequently I allow the appeal to the limited extent of holding that the prohibitory order issued by the court will operate to bar the payment to the judgment-debtor by the Garrison Engineer of all amounts payable as upto that date, whether Rs. 7237 alone, or aggregating to any higher figure. The order will obviously not operate in respect of further earnings, if any, by the contractor, beyond that date. If the decree-holder desires to restrain the garnishee in respect of payment out of such future monies earned, he will have to take separate proceedings. The learned Subordinate Judge was hence not justified in dismissing the application outright, and in holding that the prohibitory order issued was effective only upto the extent of Rs. 7237 odd and no more. The appeal is thus partly allowed. The parties will bear their own costs.