

(1965) 05 CAL CK 0020
In the Calcutta High Court
Case No : A.F.O.O. No. 163 of 1961

Champarun Sugar Co. Ltd. and Another	APPELLANT
Vs	
Haridas Mundhra and Others	RESPONDENT

Date of Decision : 05-05-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 43, Order 21 Rule 46, 51, 60(1)

Citation : AIR 1966 Cal 134 : (1966) 1 CALLT 330 : 69 CWN 815

Hon'ble Judges : D.N. Sinha, J;A.C. Sen, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sinha, J.—The facts in this case are shortly as follows: On or about 19th day of April, 1961 the respondent No. 1 Haridas Mundhra filed a suit in this Court being suit No. 600 of 1961 (Haridas Mundhra v. Mrs. Mary Therese Turner and Ors.) for specific performance of an agreement relating to the sale of 51 per cent ordinary shares in Turner Morrison and Co. Private Limited and for other reliefs. In the plaint of the said suit, it was alleged as follows: J.G. Turner, M.F. Turner and one A.G. Turner held the entire controlling interest in Hungerford Investment Trust Limited, the third defendant in the suit. The Hungerford Investment Trust Ltd., controlled the entire share capital of M/s. Turner Morrison and Co., Private Ltd., the 4th defendant in the said suit. On the 29th November, 1955 Mundhra made an offer to purchase 49 per cent of the entire issued capital of the said M/s. Turner Morrison and Co. Private Ltd. On the 8th December, 1955 the said Hungerford Investment Trust Ltd., accepted the said offer. It was inter alia agreed between the parties that not only would Mundhra be entitled to purchase 49 per cent of the issued capital in the said company put that he shall have the option at any time within five years from the date of the acceptance of the said offer, to purchase the remaining 51 per cent of the issued capital of the 4th defendant, Turner Morrison and Co. Private Ltd., for the sum of Rs. 86,60,000. On 30th October, 1956 an agreement was entered into between the said parties

and M/s. British India Corporation Ltd., the 5th defendant in the said suit, inter alia as follows: That the agreement contained in the offer dated 29th November 1955 and acceptance dated 8th December, 1955 was to be considered as a binding agreement; that the 5th defendant, the British India Corporation Ltd., would be at liberty to assign its right, title and interest to Mundhra, and the purchase and sale would be completed within 14 days of the execution of the agreement. By a deed of Revocation dated 7th September 1957 Mundhra became entitled to exercise the option and to purchase 51 per cent of the remaining shares. It is stated that Mundhra paid for and obtained a transfer of 49 per cent of the said shares. On the 7th December, 1960 and 28th December, 1960 Mundhra, through his solicitors, exercised his option to buy the remaining 51 per cent of the said shares. As the defendants failed to act in terms of the said agreement, Mundhra instituted the said suit for specific performance of the agreement relating to the sale of 51 per cent ordinary shares in Turner Morrison and Co. Private Ltd., and/or specific delivery of the said shares against payment of the consideration thereof. On May 22, 1963 the appellants, M/s. Champarun Sugar Co. Ltd., and Another obtained a decree in Suit No. 179 of 1960 (Champarun Sugar Co. Ltd. v. Shri Haridas Mundhra) in the court of the Civil Judge, Kanpur, against Haridas Mundhra for a sum of Rs. 60,950.20 nP. and costs. On December 17, 1963 the decree holders filed an application for execution, by tabular statement, in which they prayed for execution of the said decree, passed by the Kanpur Court and transmitted to this Court, by attachment and sale of the option of Mundhra under the agreement dated 30th October, 1956 taken together with the Deed of Revocation dated 7th September, 1957, and of all his rights under the said agreement which is the subject matter of Suit No. 600 of 1961 then pending in this Court. Upon this application being made, an ex parte order of attachment was made by the learned Master of this Court, the relevant part whereof is set out below:

"Whereas Shri Haridas Mundhra the defendant No. 1 abovenamed has failed to satisfy the decree made in the above suit No. 179 of 1960 of the Court of Second Civil Judge Kaupur and dated the 22nd day of May 1963. It is ordered that the said defendant Shri Haridas Mundhra be and he is hereby prohibited and restrained until further order of this Court from exercising the option under the agreement dated the 30th October 1956 with Hungerford Investment Trust Limited and J.G. Turner and N.F. Turner construed with Deed of Revocation dated the 7th day of September 1957 between British India Corporation Ltd., and the said defendant Shri Haridas Mundhra, to purchase 51 per cent shares of the Turner Morrison and Co. Ltd., and of all rights of the said defendant Shri Haridas Mundhra under the said agreement which is the subject matter of Suit No. 600 of 1961 (Haridas Mundhra v. Mrs. Mary Therese Turner) of this Court in respect of the said option as recorded in the said agreement by sale, gift or otherwise and all persons be and they are hereby prohibited and restrained from receiving the same by purchase, gift, sale or otherwise until further order of this Court."

2. On January 21, 1964 an application was made by Mundhra for an order that

the ex parte order of attachment dated December 17, 1963 passed by the learned Master be set aside and/or vacated and/or recalled and that the attachment be withdrawn and/or vacated and for such further or other orders as it might be necessary to pass, in order to grant relief to the petitioner. This application came up before Ray, J., and was disposed of by his judgment and order dated March 5, 1964. The learned Judge allowed both the above mentioned prayers of the petitioner. It is against this order that this appeal is directed. It may be mentioned here that on the 25th February 1964 the said suit was decreed in favour of Mundhra.

3. The learned Judge in deciding the said application, held that the right attached was not attachable in law and that the procedure for attachment followed was not in accordance with law. Firstly, the learned Judge held that the option having been exercised, the right to exercise the option could not be attached. Secondly according to the learned Judge, a decree having been passed, the attachment had the effect of attaching the decree by a circuitous process which could not be permitted. Thirdly, according to the learned Judge, the property sought to be attached was movable property and the proper way of attaching it was by actual seizure. As there could not be a seizure of a right to purchase shares, there could be no attachment. The learned Judge came to the conclusion that the "matter in question" was not attachable and that in fact, there was no attachment in accordance with the provisions of the Code and the High Court Rules.

4. Before dealing with the matter, it is necessary to clear up certain points. The application in the court below was for setting aside the ex parte order dated December 17, 1963. As I have stated above, an application was made upon a tabular statement for attachment and sale, not only of the right of Mundhra to exercise his option under the agreement dated October 30, 1956 read with the Deed of Revocation dated September 7, 1957, but also of all his rights thereunder. The actual order that was made by the learned Master was in the form of a prohibitory order prohibiting and restraining Mundhra until further orders of the Court, from exercising his option under the agreement dated 30th October 1956 read with the Deed of Revocation dated September 7, 1957 as also exercising all rights which Mundhra had under the said agreement which is the subject matter of Suit No. 600 of 1961, by sale, gift or otherwise. The form in which the order was made is the usual form of a prohibitory order. As the Option had already been exercised, there is some force in the observation of the court below that there was no further scope for issuing any prohibitory order in respect thereof. It must be remembered however that at the time the order was made, the suit was pending and was being contested. There was no knowing whether the statement of Mundhra that he had already exercised his option, would be upheld or not. At that stage, the order was not inappropriate. It has now become useless. There remained, however, the remaining rights of Mundhra under the said agreement. The question to be considered is as to whether those rights were attachable and whether in respect of them a prohibitory order could be issued and secondly, whether the prohibitory order that has been made is in

accordance with the provisions of law.

5. Before considering the question as to whether the prohibitory order issued by the learned Master is in accordance with law, it is necessary to understand the nature of the right which was being attached and the form of attachment. I have already mentioned the facts stated in the plaint filed in Suit No. 600 of 1961 instituted by Mundhra for specific performance of the agreement in respect of the purchase of the 51 per cent of the shares in Turner Morrison and Co. Private Ltd. On the 25th February, 1964 the said suit was decreed in favour of Mundhra. We may, therefore, proceed on the footing that the facts stated in the said suit have been substantiated. The suit was brought in order to enforce specific performance of the contract for the purchase of 51 per cent of the shares, but the agreement to purchase the same does not stand by itself. The original offer was to buy 49 per cent of the shares but ultimately it was agreed that not only would Mundhra be entitled to purchase 49 per cent of the shares but would have an option to purchase the remaining 51 per cent of the shares in the said company. The agreement dated 30th October, 1956, refers to the agreement contained in the offer dated 29th November, 1955 for the purchase of 49 per cent of the shares and its acceptance dated 8th December, 1955 which also deals with the option regarding the remaining 51 per cent of the shares. This will be important because in the tabular statement and the order of attachment, only the agreement dated October 30, 1956 and the Deed of Revocation dated 7th September, 1957 have been mentioned. The result is that the contract between the parties may be considered to be a contract to purchase 49 per cent of the said shares and for an option to purchase the remaining 51 per cent of the shares by Mundhra. So far as the purchase of the 49 per cent is concerned, Mundhra has already paid for and completed the purchase. He has therefore exercised the option and filed a suit for the specific performance and for the enforcement of the purchase relating to 51 per cent of the said shares. It is at this stage that an attachment was levied, prohibiting him from exercising the option under the agreement dated 30th October, 1956 read with the Deed of Revocation dated 7th September, 1957 and of all rights under the said agreement which is the subject matter of Suit No. 600 of 1961, by sale, gift or otherwise. Inasmuch as Mundhra had already exercised his option, that part of the attachment which prohibited him from exercising the option has become infructuous. The question is as to whether the prohibitory order, so far as his remaining rights are concerned is valid or not. Briefly speaking, it amounts to this. The agreement between the parties was that 49 per cent of the shares would be purchased and an option might be exercised for the purchase of the remaining 51 per cent of the shares. So far as the purchase of 49 per cent of the shares is concerned, it became an executed contract inasmuch as Mundhra had completed the purchase. He had thereafter exercised the option. Since it was at this stage that the attachment was levied, it will have to be considered as to whether the right that he then had was a right that could be the subject matter of an attachment. Before proceeding to examine the point, it will be necessary to

consider certain legal provisions. u/s 3 of the Transfer of Property Act, an "actionable claim" includes any beneficial interest in movable property not in the possession either actual or constructive of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. u/s 130 of the Transfer of Property Act, an "actionable claim" may be transferred, provided the transfer is in writing signed by the transferor or by his duly authorised agent. Under the General Clauses Act, immovable property includes land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth and moveable property means property of every description except immovable property. A right to purchase shares or even an option to do so is a beneficial interest in movable property and is an actionable claim where the movable property is not in possession. Such a right is assignable and transferable. According to the above definition, it must be considered to be movable property. Section 51 of the CPC lays down the procedure in execution. The relevant provision runs as follows:

"51. Subject to such conditions and limitations as may be prescribed the court may on the application of the decree-holder, order execution of the decree--

(a) by delivery of any property specifically decreed,

(b) by attachment and sale or by sale without attachment of any property;

xx xx xx (e) in such other manner as the nature of the relief granted may require."

Section 60 deals with the question of attachment, the relevant provisions thereof are as follows:

" 60(1). The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf."

This is followed by the enumeration of certain things which cannot be the subject matter of attachment. For example, a mere right to sue for damages or any right of personal service or an expectancy of succession by survivorship, cannot be the subject matter of attachment.

6. In this particular case, the right to be attached is the right that arose from an agreement for the sale of certain shares for an agreed consideration. It is an actionable claim and/or a beneficial interest in movable property which is itself to be considered as movable property and is assignable and transferable. There is

no reason why such a right cannot be the subject matter of an attachment. What is argued is that the contract is really not an executed but an executory contract and there are mutual rights and obligations. It is even argued that the payment of the money is a contingency and the contract is a contingent contract. It is argued that such a right is neither assignable nor can be the subject matter of attachment. In order to consider this point it will be necessary to examine a number of authorities which have been cited before us.

7. The first case cited is a decision of the Privy Council *Syed Tuffazzal Hossen Khan v. Rughunath Prasad* 14 MIA 40 (PC). The facts in that case were as follows: A suit was brought for establishing a right as purchaser at an auction-sale in execution of a decree, of the right, title and interest of the judgment debtor. There was protracted litigation and ultimately the matter was referred to arbitration by an order of the court. Before the award was made, the right of a party in the award that was going to be made was sold in an auction sale, at the instance of the decree holder. It was held that this was an inchoate right and could neither be attached nor sold. It was held that any "property" could be the subject matter of attachment or sale, but a mere right of suit or an inchoate right under an award which had not yet been given, could not be said to be "property" which was liable to attachment or sale. It was *inter alia* observed that a debt or property which is seizable or may be attached, does not lose those qualities merely by being the subject matter of a pending suit.

8. In the instant case, we are not concerned with an inchoate right or a mere right to sue. According to the plaint, a right had already accrued for purchase of a certain number of shares. It is admitted on all hands that the right was a very valuable right. It is obvious that the plaintiff considered the right to be an existing right, otherwise, he could not file a suit for specific performance of it. Where there is a breach of contract, a party may accept the breach and sue for damages. Such a suit would be for the exercise of a mere right to sue which cannot be attached. In order, however, to maintain a suit for specific performance the plaintiff must keep the contract alive. Therefore, at the time of attachment, it was an existing right and not one which was to arise in future or was an inchoate right.

9. The next case to be considered is a Bench decision of this High Court *Rudra Parkash Misser v. Krishna Mohun* ILR 14 Cal 241. The facts in that case were as follows: A person of the name of Shib Parkash Misser executed a Deed of Gift in favour of the first defendant, retaining for himself *inter alia* the right to hold 150 bighas of land of Mouzah Phulbaria or any other mouzah, for the purpose of cultivation, free of rent. The said 150 bighas were never demarcated. Some years after the execution of the said Deed of Gift, the plaintiff obtained a decree against the grantor. He proceeded to execute the decree and himself became the purchaser in the execution sale, of the judgment-debtor's right to set by division or separation, 150 bighas of land in mouzah Phulbaria or any other mouzah. He then brought the suit to have the 150 bighas assigned to him. The learned Judge

said as follows:

"The only real point suggested before us is that the interest of Shib Perakash Misser in 150 bighas under the Deed was not such an interest as could be attached and sold in execution of a decree. Section 266 of the CPC (corresponding to Section 60 of the present Code) describes what property is liable to attachment and sale in execution; and after mentioning a variety of matters, it says that, "except as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which or the profits of which, he had a disposing power which he may exercise for his own benefit etc." Therefore, any interest which is saleable is attachable and subject to sale in execution. It is perfectly clear from the terms of the Transfer of Property Act that the interest in question is saleable. u/s 6 of that Act, "property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force. The framers of that section clearly considered that property includes an actionable claim, because Clause (c) of that section says: "a mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred." Besides this there is a whole chapter in the Act, Chapter VIII, dealing with the subject. of such claims, thereby placing it beyond doubt that a claim such as this is a transferable claim, and therefore capable of being attached and sold in execution within the meaning of Section 266 of the Code of Civil Procedure."

10. The next case to be considered is a decision of the Privy Council AIR 1928 174 (Privy Council) . By a Deed, Venkata Subrahmanya Ayyar, on behalf of himself and his minor son sold the village of Siyatti to Venkatapathi Naidu for the consideration of Rs. 10,000. On the same date the parties executed, what was called a "counterpart document", by which it was provided that if after the period of 30 years the transferor wished to have the village again then he would be entitled to do so upon his paying to the transferee the sum of Rs. 10,000. The plaintiff in the case was the assignee of the interest of the transferor. He tendered the money and called for a reconveyance. But as this was not complied with, he instituted a suit. The question that arose for determination was as to whether the original conveyance, read with the counterpart document constituted a completed contract or only a standing offer by the transferee, the benefit of which could not be assigned to a stranger such as the plaintiff, until the offer had been accepted by the tender of the amount after the expiry of 30 years and the offer had ripened into a contract to buy and sell. It was contended on behalf of the defendant that it was a mere offer or an option and had not ripened into a contract and as such could not be the subject matter of assignment. Sir Lancelot Sanderson said as follows:

"Their Lordships are of opinion, that there was a completed contract between the parties on 27th January 1891. All the elements necessary to constitute a contract were present. There was an undertaking on the part of Venkatapathi to reconvey the village to Venkata Subrahmanya and Krishnaswami in the event of their

calling for a conveyance at the time and upon the terms set out in the "counterpart document". The time at which the option was to be exercised and the price which was to be paid for the property were specified.

There was consideration for the contract because Venkatapathi, by the sale of 27th January 1891, obtained possession of the property and Venkata Subrahmanya received Rupees 10,000 besides acquiring the right and benefit of getting back the village upon the conditions specified in the "counterpart document". Their Lordships therefore concur with the conclusion of the learned Judges of the High Court on this question.

They are also of the opinion that it was not intended that the option could be exercised only by Venkata Subrahmanya and Krishnasami personally. The terms of the contract and the time at which the option was to be exercised go to show that the intention was that the option might be exercised by the above mentioned two persons or their heirs.

It was not disputed that if the transaction of 27th January 1891 amounted to a completed contract, as their Lordships have decided, the benefit of the contract could be assigned."

11. In the instant case, part of the contract had already been executed, because Mundhra had paid for and obtained delivery of 49 per cent of the shares which was part of the whole contract containing the option and the right to purchase the remaining 51 per cent of the shares. There was a completed contract.

12. The next case to be considered is a Division Bench Judgment of the Bombay High Court Vishweshwar Narsabhatta Gaddada Vs. Durgappa Irappa Bhatkar, . In that case, the question was whether an option to purchase property sold is assignable. Beaumont C. J. said as follows:

"There can be no doubt that both under the common law and u/s 23(b), Specific Relief Act, an option to repurchase property is prima facie assignable though it may be so worded as to show that it was to be personal to the grantee and not assignable. u/s 23(b) Specific Relief Act 1877, it is provided that a specific performance of a contract may be obtained by the representative-in-interest or the principal, of any party thereto; provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative-in-interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed."

13. In the present case, there is no suggestion that the exercise of the option was dependent on any personal consideration or that the transfer was dependent on any personal quality of the transferee.

14. The next case to be considered is a Bench Decision of the Madras High Court Rajah Bahadur Narasingerji Gyanagerji v. P.P. Rayanim Garu AIR 1921 Mad 498.

It was held there that a right to get a reconveyance of "possession of property worth 15 lakhs for payment of 6 lakhs" is property of a very valuable kind which is attachable and saleable under the provisions of the Civil Procedure Code.

15. Applying the principles laid down in the cases above mentioned, it clearly appears that the option to purchase the shares and the right to purchase the shares for an agreed consideration, is a right to property under a completed contract, being property which is both transferable and assignable. It is attachable under the provisions of the Code of Civil Procedure. One of the arguments that has been advanced is that the right is neither assignable nor transferable because (i) it is an executory contract and (ii) that there are mutual rights and obligations. Reference has been made to the comments of Mr. Mulla u/s 37 of his treatise on the Indian Contract Act. The learned author has referred to an English decision *Tolhurst v. Associated Cement Manufacturers* (1902) 2 KB 660. In that case Collins M. R. says as follows:

"Neither at law nor in equity could the burden of a contract be shifted off the shoulders of a contractor on to those of another without the consent of the contractee. A debtor cannot relieve himself of his liability to his creditor by assigning the burden of the obligation to some one else; this can only be brought about by the consent of all three, and involves the release of the original debtor.... on the other hand, it is equally clear that the benefit of a contract can be assigned, and wherever the consideration has been executed, and nothing more remains but to enforce the obligation against the party who has received the consideration, the right to enforce it can be assigned, and can be put in suit by the assignee in his own name after notice . . . There is, however, another class of contracts where there are mutual obligations still to be enforced, and where it is impossible to say that the whole consideration has been executed. Contracts of this class cannot be assigned at all in the sense of discharging the original contractee and creating privity or quasi privity with a substituted person.....This is the reason why contracts involving special personal qualifications in the contractor are said, perhaps somewhat loosely, not to be assignable.

16. It is argued that in the present case the contract was an executory contract and was non-assignable, because the payment of consideration was a burden which cannot be transferred. In the above-mentioned case, the contract was between the owner of certain chalk quarries and a Cement Company, by which the owner agreed that he would, for fifty years, supply to the company and the company should take and buy from him, at least 750 tons of chalk per week at a certain price and so much more as the company should require. The Cement Company assigned the contract and sold its undertaking and went into voluntary liquidation. Collins M. R. held that this was an assignment of a burden and no suit could be brought without making the original parties to the contract as parties to the suit. This judgment was not, however, upheld by the House of Lords. It was held in *Tolhurst v. Associated Portland Cement Manufacturers* (1903) AC 414 that the assignment was valid and that the assignee could

enforce the benefit of the contract by action without joining all the parties to the original contract. The principle that the burden of a contract cannot be transferred without the consent of all the parties to the original contract is good law. Also it is good law that a contract which involves personal considerations cannot be transferred. The present case however does not come under any such category. Here, the contract was a completed contract for which there was consideration. The mere fact that a part of the consideration has yet to be paid does not bring it within the mischief of the principles stated above. If that were so, no contract or benefit under a contract could be assigned or transferred unless the consideration had been fully paid. That is not the law. Reference may be made to a decision of Sale J., of this Court *Jaffar Moher Ali v. Budge Budge Jute Mills Co. Ltd.* ILR 33 Cal 702. The facts in that case were as follows: On the 20th July, 1905, the defendant company entered into a contract with one Cassim Karim for the sale to him of certain gunny-bags to be delivered in monthly instalments in the months of January to June 1906. The contract contained certain buyer's options as to quality and packing of which the latter was declarable not later than the first day of the month previous to that in which delivery was due. There was no specific clause in the contract making it assignable. By an indenture of assignment dated the 16th August 1905 Cassim Karim, in consideration of a sum of Rs. 100, assigned to the plaintiff the said contract and all the benefits and advantages thereunder. On the 19th August, 1905, notice of the assignment was given to the defendant company who refused to accept the notice or to recognise the assignee. The assignee thereupon declared his option with repaid to the instalment due in January 1906 and sent shipping instructions which were ignored. He then sued for Rs. 3,000 as damages for non-delivery of the January instalment. The main contention of the defendant company was that the contract was not assignable. Sale, J., said as follows:

"Now I am inclined to think that the plaintiff has succeeded in showing that the rule as regards the assignability of contracts in this Country is that the benefit of the contract for the purchaser of goods as distinguished from the liability thereunder may be assigned, understanding by the term benefit the beneficial right or interest of a party under the contract and the right to sue to recover the benefits created thereby. This rule is however subject to two qualifications: first, that the benefit sought to be assigned is not coupled with any liability or obligation that the assignor is bound to fulfil, and next that the contract is not one which has been induced by personal qualifications or considerations as regards the parties to it. Neither of these exceptions I think apply to the present contract. There is nothing on the face of the contract to suggest that any credit was given by the defendant company to the original purchaser or that any circumstance of an especial or personal character existed, which led to the making of the contract between the parties thereto, nor looking at the terms of the contract does it appear to impose any liability or obligation of a personal character on the assignor, which would prevent the operation of the rule of

assignability. The contract is for the sale on the usual terms of a certain quality of gunny-bags to Cassim Karim, and subject to the exercise of certain options the purchaser has an absolute right to call for delivery of the goods on payment of the price. I am inclined to think that the right to claim the benefit of the contract, or, in other words, the right on certain conditions to call for delivery of the goods mentioned in the contract, constitutes a "beneficial interest in moveable property, conditional or contingent", within the meaning of the definition of an actionable claim in Section 3 of the Transfer of Property Act, and as such is assignable."

Therefore, at least so far as the Indian Law is concerned, the mere condition that for the purchase of goods, consideration should be paid, does not make the benefit under a contract non-assignable.

17. The next point taken is that there is no mode of attachment specified in the CPC or in the forms prescribed thereunder for attachment of a right of purchase and, therefore, the attachment was not in proper form. This involves the finding of the Court below that attachment of moveable property can only be effected by actual seizure and as a right to purchase the shares cannot be seized, no attachment is possible. I shall now proceed to consider this point.

18. Reference has already been made to Sections 51 and 60 of the C. P. Code. Section 51 lays down that subject to such conditions and limitations as may be prescribed, one of the modes of execution of a decree is by attachment and sale of any property. It also lays down that execution can be made in such other manner as the nature of the relief granted may require. Section 60 lays down what properties are liable to attachment and sale in execution of a decree. I have already pointed out that the right of Mundhra to exercise his option, as well as the right to purchase the shares were rights which constituted "property", which was transferable and assignable and, therefore, could be the subject matter of an attachment. If, therefore, the property is attachable and the decree holder can ask for execution, then the court cannot, in an application made by the decree holder for execution say that it has no means of carrying out the execution of the decree. The argument put forward is as follows: It is said that the modes of attachment of property are laid down in Rules 41 to 54 of Order 21 of the C. P. Code. Rule 41 deals with the examination of the judgment-debtor as to his property. Rule 42 deals with decree for rent or mesne profits. Rule 43 deals with attachment of moveable property other than agricultural produce in possession of the judgment debtor. Rules 44 and 45 deal with attachment of agricultural produce. Rule 46 deals with attachment of debt, share and other property not in possession of the judgment-debtor. Rule 47 deals with an attachment of shares in moveables. Rule 48 deals with salary and allowance of a public officer etc., and Rule 49 deals with attachment of partnership property. Rule 52 deals with attachment of property in custody of court and public officer. Rule 53 deals with attachment of decrees and Rule 54 deals with attachment of Immovable property. It is argued that none of these rules deals with attachment of a right to

exercise an option, or the purchase of shares. I do not see why Rule 46 of Order 21 with a little variation, cannot be made to apply to the facts of this case. Under this rule, in the case of moveable property not in the possession of the judgment debtor, the attachment shall be made by a written order prohibiting the person in possession of the same for giving it over to the judgment-debtor. In this particular case, however, the order is not in this specific form. The prohibitory order restrains the judgment debtor from exercising his rights and/or any other person from receiving the same from him by purchase, gift, sale or otherwise. It is argued that the form of attachment used in this case has not been provided for in any of the rules above mentioned. Reference is then made to the forms in appendix E in the first schedule to the Code. It is argued that none of the forms mentioned therein are appropriate to the facts of the instant case. It is argued that, since there is no provision either in Order 21 or the forms for execution in appendix E, an attachment or a prohibitory order cannot be issued. So far as the forms are concerned, I do not see why form No. 16 cannot be used subject to certain modifications. This is headed "attachment in execution" and deals with a prohibitory order, where the property to be attached consists of moveable property to which the defendant is entitled subject to a lien or a right of some other person to the immediate possession thereof. It consists of a prohibitory order upon the defendant from receiving the property and the person in possession from delivering the said property to any person or persons whomsoever. It may be that the form is not entirely appropriate to the facts of this case and would have to be modified to a certain extent. But, that is no reason for holding that no prohibitory order could be issued. The learned Judge has held that, since this is a moveable property, the only way in which execution could be issued was by way of an actual seizure of the property under Order 21, Rule 43. The learned Judge further holds that since a right to purchase shares cannot be seized, no prohibitory order could be issued. The learned Judge is also of the opinion that the rules of this Court in its Original Side do not also support such an attachment. In our opinion, the learned Judge is in error on this point. The right in question, being moveable property as explained above, can be attached in execution, and if there are no specific provisions as to the mode of attachment or no particular form which is appropriate, then the court has ample jurisdiction under the provisions of Section 51(e) of the C. P. Code to evolve a prohibitory order suitable to the nature of the case. Here, the right to be attached is a right exercisable by Mundhra, the judgment debtor. Therefore, it is entirely appropriate to issue a prohibitory order prohibiting him from exercising his right by sale, gift or otherwise. All other persons are prohibited and restrained from receiving the same from him by purchase, gift, sale or otherwise. Whether this would be binding on the whole world is a matter that remains to be considered. However, that appears to be the form used by this court. So far as "seizure" is concerned, the seizure of a moveable property would have to be effected, in the form in which it is capable of being done in a particular case. The dictionary meaning of the word "seizure" is the act of seizing, sudden and violent grasp of a thing or taking possession of it or taking hold of it or the act of taking

by warrant. If a right cannot be actually seized, in the sense that one cannot take physical possession of it then, taking hold of it in any possible manner would also come within the expression "seizure". In the case of a right, if the person who is the owner of it is prohibited from exercising it and other parties are restrained from receiving an assignment or transfer of the same from him, that is a sufficient "seizure", being the only way in which the particular moveable property concerned can be seized. In our opinion, it is not correct to say that the right of Mundhra could not be the subject matter of an attachment or that the prohibitory order issued by the court is defective and contrary to law.

19. Lastly, an argument was sought to be advanced that since a decree has been passed, the attachment levied has come to an end as the right has merged in the decree and without a fresh attachment of the decree, the attachment already made cannot continue. In our opinion, we are not called upon to decide this point in the present case. The application which came up for determination by the court below was as to whether the ex parte order of attachment in the shape of a prohibitory order passed by the learned Master on the 17th December, 1963 should be set aside or not. Whether that order has become ineffective by the reason of the passing of a decree is not a point that arises in the application, That will arise when the decree holder takes the next or further steps in execution and must be kept open for the present.

20. For the reasons given above, this appeal must succeed and the order of the learned Judge in the court below dated 5th March, 1964 is set aside, and the order passed by the learned Master dated 17th December 1963 is upheld. The respondent must pay the cost of this appeal which will be added to the decree-holder's claim. Certified for two counsel.

A.C. Sen, J.

21. I agree.

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