
(1907) 03 BOM CK 0002
In the Bombay High Court
Case No : Appeal No. 36 of 1906

Damodar Nandram

APPELLANT

Vs

Panalal Madiram

RESPONDENT

Date of Decision : 18-03-1907

Acts Referred:

Citation : (1907) 9 BOMLR 540

Hon'ble Judges : Lawrence Jenkins, J; Beaman, J

Bench : Division Bench

Judgement

Lawrence Jenkins, C.J.—This is an appeal from an order which is expressed to be an attachment of property before judgment by the appointment of a receiver.

2. So far as it is expressed to be an attachment presumably the order was passed u/s 483 of the CPC and it appears to us that in this respect the order was erroneous; because that section provides for the attachment of the property of the judgment-debtor; and it is common ground here that this is not the property of the judgment-debtor but is joint property of the partnership.

3. This objection however does not apply to the appointment of a receiver which is the proper order to make in a case of this kind and it seems that the provisions of Section 505, Civil Procedure Code, have been complied with.

4. There is one irregularity to which we wish to draw attention because it is of common occurrence and it is that the affidavit does not comply with Section 196 of the Civil Procedure Code, That section provides that "affidavits should be confined to such facts as the declarant is able of his own knowledge to prove, except a interlocutory applications on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth."

5. Now this is an interlocutory application, so that the statements of the declarant's belief were admissible. But the belief is not stated nor are reasonable grounds thereof set forth.

6. Our only reason for not insisting upon the compliance with this section in this case is that no such objection was taken before the lower Court or even before us.

7. We allude to it now because we think both pleaders and Judges should be careful when affidavits are used to see that the provisions of Section 196 are observed and any failure in this direction can only arise from a careless disregard of the provisions of the Code which is much to be condemned.

8. In this case however we will dismiss the appeal with costs.