

(1956) 11 MP CK 0010
In the Madhya Pradesh High Court
Case No : Civil Revision No. 281 of 1954

Firm Deochand Pannalal and Others

APPELLANT

Vs

Shubhkaran Shivdeoji

RESPONDENT

Date of Decision : 15-11-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 53, Order 21 Rule 53(1)

Citation : AIR 1957 MP 9

Hon'ble Judges : Dixit, J

Bench : Single Bench

Advocate : A.P. Tayal, for the Appellant; N.H. Dravid, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—This is a petition to revise an order of the second Additional District Judge, Indore, rejecting the objection of the applicants that an application for execution of a decree against them filed by the non-applicant Shubhkaran on 15th March, 1951, was not maintainable inasmuch as the decree had been attached by Messrs. Khemji Punja & Co., Bombay, in execution of their own decree against Shubhkaran. The precise objection raised by the applicants in the lower Court, and negatived there was that the non-applicant had not obtained the leave of the Court making the attachment.

2. Before me Mr. Tayal learned counsel for the applicants, urged that under the order of attachment of the decree in question issued on 6th October, 1951 by the Additional District Judge, Indore to the Court of the District Judge, Indore, the execution of the decree was stayed until the court of the Additional District Judge, Indore which passed the decree in favour of Messrs. Khemji Punja & Co., cancelled the notice requesting the stay of execution or until the holder of the decree sought to be executed, namely Messrs. Khemji Punja & Co., applied to the Court to execute the decree; and that in that order it was not stated that the execution of the attached decree could be proceeded with when the holder of the attached decree applied to the Court for executing that decree.

It was maintained that under the terms of the order dated 6th October, 1951, it was not open to the non-applicant to take proceedings for the execution of their own decree against the applicants. It was further stated that in any case the non-applicant's application for the execution could not be entertained as it was filed without the leave of the Court making the attachment and that it did not state that the amount that would be realised in execution of the decree would be for the benefit of the attaching creditor. In my opinion, there is no force in any of these contentions. There is no dispute that the direction made by the Court of Additional District Judge, Indore, on 6th October, 1951, with regard to the attachment of the decree was under Order 21, Rule 53 (1) (b). The effect of the attachment of the decree under this rule is to stay the execution of the attached decree until the conditions mentioned therein happen.

The stay order is, however, not absolute, It does not prevent the holder of the decree sought to be executed or the holder of the attached decree from executing the attached decree. The object of the stay is to prevent the holder of the attached decree from realising or taking away the proceeds of the decree. As pointed out by the Privy Council in 1940 MWN 1194 (Privy Council) a request made under O, 21, Rule 53 (1) (b) is a mere request.

"The rule does not purport to prohibit the Court to which it is addressed from executing the decree unless the conditions contained in the request are fulfilled. The object of the request is to ensure that the holder of the decree does not himself proceed to execution without the leave of the Court making the attachment."

These observations make it sufficiently clear that even if in the request for the attachment of the decree there was no mention of the execution of the decree being stayed until the holder of the decree attached applied yet such a decree holder could apply for execution of his decree even after attachment after obtaining the leave of the Court making the attachment. The execution of the decree would, however, be subject to the condition that the amount realised by the holder of the attached decree would not be paid to him but would have to be deposited in Court for the benefit of his judgment creditor

I am supported in this view by the decisions in *Firm Mahesh Dass Chanan Dass v. Mehnga Ram* AIR 1934 Lah 142 (B) and *Murhari Narayan Teli Vs. Narayan Balvant Kasture*, In the former case it was held that when a decree is attached in execution of another decree, the former decree can be executed either by the attaching decree holder or by the decree holder in the attached decree but only in the first instance for the benefit of the attaching decree-holder, and nothing can be paid to the judgment debtor of the attaching decree-holder till the decree in execution of which the other decree was attached has been satisfied.

The decision in *Murhari Narayan Teli Vs. Narayan Balvant Kasture*, is also to the same effect. In that case it was further held that Sub-rule (6) of Order 21, Rule 53, C. P. C., does not bar the execution of the attached decree by the holder

thereof even during the pendency of the attachment if the amount realised by the execution of the decree is not paid to the holder of the attached decree but is deposited in Court for the benefit of his judgment creditor. It was, it I may say so with respect to the learned Judge, pertinently observed in the Bombay case that :--

"Supposing execution is not allowed of this decree till the attachment continues in force, it is possible that the execution of this decree may be time-barred and the appellant's judgment-creditor himself might not be able to recover the amount of his decree. If, however, this decree is executed to the extent of the money claimable thereunder being deposited in Court, the rights of the appellant's judgment-creditor will not be damaged in any way. On the other hand, there will be a specific amount lying to his benefit in the Court which he can take away in execution of the decree in his favour and the balance may be paid over to the present appellant."

It must be noted that what Sub-rule (6) of Order 21, Rule 53, C. P. C., prohibits is an adjustment or payment between the judgment debtor under the decree attached and the decree-holder thereof and not the realisation of any amount in execution of a decree if it is deposited in Court for the benefit of the attaching decree-holder.

3. As to the contention that the opponent should have stated in the body of the application for execution that it was being made for the benefit of his judgment creditor, I do not think it was necessary under any provision. In such a case it would be assumed that the amount realised by the holder of the attached decree in execution of the attached decree would be in the first instance for the benefit of his judgment-creditor. The omission on the part of the opponent decree-holder to obtain the leave of the Court making the attachment, is, in my opinion, not such a defect as would invalidate the execution proceedings.

4. For the reasons, I am of the view that the order of the second Additional District Judge, Indore, permitting the execution of the decree in question subject to the condition that the amount realised in execution would not be paid to the opponent but would be deposited in Court for the benefit of his judgment-creditor is correct and this petition must be and is dismissed with costs.