
(1938) 09 BOM CK 0003

In the Bombay High Court

Case No : O.C.J. Appeal No. 34 of 1938 and Suit No. 916 of 1926

Gajraj Sheokarandas

APPELLANT

Vs

Sir Hukamchand Sarupchand, Kt.

RESPONDENT

Date of Decision : 30-09-1938

Acts Referred:

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

Citation : AIR 1939 Bom 90 : (1939) 41 BOMLR 19

Hon'ble Judges : Rangnekar, J; John Beaumont, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—This is an appeal from a decision of Mr. Justice, Engineer, which raises the question whether a deposit made by a member of the East India Cotton Association with that Association under their rules is liable to attachment. Under the Articles, of Association of the East India Cotton Association every member has to make a deposit, which is liable to forfeiture in certain events, and is also subject to certain liens. Subject to the liability to forfeiture and to the satisfaction of the liens, the deposit with interest is repayable to the member on his ceasing from any cause to be a member, the money being repayable within twelve months with interest. Then Clause 21 of the Articles provides that all moneys received by the Association as deposit shall be deemed to be under the absolute control of the Association. The Association can use the moneys for any of the objects ? of the Association in the same manner as if the moneys belonged to the Association absolutely.

2. The judgment-creditor applied for attachment under Order XXI, Rule 46, of the Civil Procedure Code, 1908, and a warrant was issued under Sub-rule (a) which deals with the case of a debt not secured by a negotiable instrument. Mr. Justice Engineer held that Sub-rule (a) did not apply and that the sum. deposited with the Association was not a debt, but he held that the case fell within Sub-rule (c) which deals with other moveable property not in the possession of the

judgment-debtor, except property deposited in, or in the custody of, any Court. In so holding, the learned Judge followed with approval a decision of Mr. Justice Mirza in *Jetha Devji & Co. v. Durgadutt* (1926) 29 Bom. L.R. 416, but, with all respect to the learned Judge and to Mr. Justice Mirza, I am unable to agree with the view that the case falls within Sub-rule (c). It seems to me quite impossible to contend that the interest which the debtor has in this deposited sum is "moveable property not in the possession of the judgment-debtor". The judgment-debtor handed over Rs. 5,000 to the Association, but those particular rupees he has no right to recover. He has a right in certain events to receive a sum of Rs. 5,000, but there is no property at the present moment representing those particular Rs. 5,000. The learned Advocate General has argued that "moveable property" in Sub-rule (c) must be given the wide meaning attributed to it in the General Clauses Act, 1897, that is to say, all property which is not immovable, but definitions in the General Clauses Act are all subject to anything repugnant thereto, and here it seems to me that the sub-rule predicates that the moveable property referred to must be capable of being in the possession of the judgment-debtor, and must therefore be property of a tangible character. This is further emphasized by the exception of "property deposited in or in the custody of any Court". It is obvious that the debtor here could not deposit in Court such interest as he possesses in this deposited sum of Rs. 5,000, nor could he assume possession of such interest. Moreover, inasmuch as the Association can use moneys deposited with it as though such moneys were their own, for aught I know they may have invested this deposit in the purchase of Immovable property. There is no evidence before us that there is any moveable property which can be affected by attachment. In the case before Mr. Justice Mirza, it is to be noticed that the main question was whether the attachment of the deposit with the East India Cotton Association could be followed by a garnishee notice, and the judgment-creditor was not before the Court. It was held that a garnishee notice requiring the Association to pay the deposited sum to the member could not be supported, and with that part of the decision I agree. The learned Judge's statement that the plaintiffs have a right to attach the debtor's interest in the deposit is, I think, incorrect.

3. In my view there is also no substance in the contention that the interest of the judgment-debtor in this sum is a debt. The way in which the case is put by the learned Advocate General is that this is a debt presently due, though payable in future, and liable in certain events to be lost altogether by forfeiture or to be diminished by the enforcement of a lien ; but he says that that does not affect the character of the debt itself, which is a debt now due though not payable. In my opinion, that is not the correct position. I think the correct view is that this is money which is only repayable in certain contingencies. The case seems to me to fall within the principle of the case of *Hutt v. Shaw* (1887) 3 T.L.R. 354, which came before the Court of Appeal in England. In that case moneys had been deposited with a stock-broker as cover, and as soon as the transactions between the depositor and the broker were closed, the moneys not used as cover were

repayable. The Court held that there was no debt at all until the transactions were closed. I think the same principle applies here, and that it is impossible to hold that there is any debt until the judgment-debtor has ceased to be a member of the Association, and his rights in the deposit can be ascertained. At the present moment, in my opinion, there is no debt, and I think, therefore, that the attachment must be raised.

4. Appeal allowed with costs. Attachment set aside. Summons made absolute.

Rangnekar, J.

5. I agree.