

(2001) 10 KL CK 0049

In the High Court Of Kerala

Case No : C.R.P. No"s. 1472, 1565 and 1566 of 1999

Greater Cochin Development Authority, Kadavanthara

APPELLANT

Vs

Harrisons Malayam Ltd. and Another

RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46, Order 21 Rule 46(2), Order 21 Rule 46A, Order 21 Rule 46B, Order 38 Rule 5

Citation : AIR 2002 Ker 119 : (2000) 2 ILR (Ker) 551

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : M.V. Joseph, for the Appellant; Antony Dominic, A.M. Shaffique, K.L. Varghese and Santha Varghese, for the Respondent

Judgement

M.R. Hariharan Nair, J.—These revisions raise important questions with regard to the satisfaction to be arrived at while passing order of attachment before Judgment: as to the manner in which the order has to be served; as to the impact of failure to strictly comply with the terms of the relevant provisions and forms and also a novel question whether steps under Order 21, Rules 46-A & 46-B can be taken by the trial Court before a decree is passed in the case.

2. C.R.P. Nos. 1565 and 1566/99 arise from the order passed in LA. Nos. 1708/99 and 6424/98 of the Sub Court, Ernakulam, both these revisions are at the instance of the defendant in O.S. No. 713/98 of the Sub Court. Ernakulam, namely, M/s Hindustan Steel Works Construction Ltd. C.R.P. No. 1472/99 is filed by the G.C.D.A., Cochin, who is the garnishee. The 1st respondent in all the three revisions is M/s Harrisons Malayalam Ltd., who is the plaintiff in the aforesaid suit whose prayer in the suit is to recover a sum of Rs. 6,19,07,317/-, being the amount payable under an alleged contract entered into with the defendant-Hindustan Steelworks Construction Ltd. (These parties will hereinafter be referred to as plaintiff and defendant respectively and G.C.D.A. will be referred to as the garnishee).

3. After hearing the plaintiff, the trial Court passed the following order on 23-12-1998 in I.A. No. 6424/98 wherein the prayer was for attachment before judgment for a sum of Rs.7,00,00,000/- allegedly due from the garnishee to the defendant.

"Heard. Issue" notice to the 1st and 2nd respondents (H.O. & Branch Office of the defendant) to Surnish security for Rs. 7 crores or to appear and show cause why they should not furnish security. Meanwhile, the petition schedule amount will be attached, for report and return of notice 27-2-1999."

4. Pursuant to notice both these respondents as also the garnishee entered appearance on 27-2-1999. Objections were filed on 27-2-1999 and 2-7-1999 respectively. The matter was ultimately heard on 6-7-1999.

5. In the meantime, I.A. No. 1708/99 was filed on 24-5-1999 alleging that violating the attachment order served on the garnishee it paid a sum of Rs. 55 lakhs to the defendant in the first week of May, 1999 and that therefrom the defendant released a sum of Rs. 21,81,000/- only by way of 5 separate cheques to the plaintiff. As the release of 55 lakhs by the garnishee was in violation of the attachment order of the Court, the petition sought direction to the garnishee to deposit before Court a sum of Rs. 50 lakhs under Order XXI, Rule 46-B or such amount which they paid to the defendant after 23-12-1998 violating the order of the Court.

6. Both these petitions were disposed of on 20-7-1999; but under separate orders. In the former petition the order passed was one making the earlier interim attachment absolute. In the latter the decision was that the garnishee should deposit in Court within 7 days a sum of Rs.50 lakhs out of the sum of Rs.7 crores attached by the Court. In C.R.P. Nos. 1565/99 and 1566/99 the defendant attacks both these orders. In C.R.P. No. 1472/99 the garnishee challenges the direction to deposit a sum of Rs. 50 lakhs.

7. In all these revisions there is a common contention, namely, that the order of interim attachment passed by the trial Court was irregular, illegal and void in so far as no copy of the order was served on the defendant and also because the attachment order itself is not in the form prescribed by the Code of Civil Procedure. There is also a contention that the order of attachment does not contain the reasons which prompted the trial Court to issue an order of interim attachment before the defendant was heard pursuant to the notice on the aspect of furnishing security. Here again, the contention is that the trial Court erred in violating the requirements of law and hence the order of attachment is void. It is on this edifice that the garnishee builds up the argument in C.R.P. No. 1472/99 that there is no justification for a direction under Order XXI, Rule 46-A of the C.P.C. making the garnishee liable for deposit of the attachment amount before Court. The contention is that no question of violation would arise based on a void order. As regards the release of Rs. 50 lakhs to the defendant after receipt of the attachment order, it is pointed out that the attachment order was forwarded to

the Finance Department; but due to a bona fide omission the Finance Department wrongly disbursed the amount in April, 1999. Lastly it is contended that the direction for deposit is bad in so far as no decree has yet been passed and the impact of the order served is only prohibitory in nature.

8. The points that arise for decision are :--

(1) Whether the order of attachment before judgment passed by the trial Court is defective in law?

(2) Whether the order of attachment is void for non-compliance with the requirements of the form in which the order was issued or due to non-service of copy thereof on the defendant?

(3) Whether the order passed under Order XXI, Rule 46-A of the C.P.C. against the garnishee is justified?

9. Point No. 1 :-- Apart from the merits of the claim of the plaintiff in the suit what was alleged in paras 7 and 8 of the affidavit justifying the order of attachment before judgment was as follows :--

"7. To the knowledge of the petitioner, the first respondent has no assets in Kerala State and if the amounts due from 2nd respondent are collected, the 1st respondent will, with an intention to obstruct or delay the execution of a decree that may be passed against them, utilise the amounts for their own purpose and the petitioner will be left with no alternative to realise the amount due to it from the 1st respondent.

8. In the above circumstances, it is highly necessary that an order for attachment before the judgment of the amount to the tune of Rs. 7,00,00,000/- or whatever lesser amount due from 2nd respondent to the first respondent is passed. If this is not done the petitioner will be put to irreparable loss and injury. It is also submitted that considering the amounts outstanding from the 1st respondent and the fact that the 1st respondent has no assets in Kerala and is otherwise financially involved, it is absolutely necessary to pass an ad-interim order for attachment before the judgment of the amount to the tune of Rs. 7,00,00,000/- or whatever lesser amount due from 2nd respondent to the 1st respondent is passed."

10. The learned counsel for the defendant relied heavily on Woody's Hotel Pvt. Ltd. v. Prasant Kumar Panigrahy (1998) 1 K LT 149 in his attack on the attachment order. After stating the object, scope and ambit of the section it was held therein that the purpose of the provision is to give an assurance to the plaintiff that his decree, if made, would be satisfied and as a guarantee against the decree becoming infructuous for want of property. It is a preventive action and not punitive. The Court can look into the conduct of the parties immediately before the suit and examine all the surrounding circumstances and based thereon an inference can be drawn as to whether the defendant is about to dispose of his property, and if so, with what intention. It was held that before

passing such order the Court must satisfy itself that the apprehended transfers are going to be made with the object to frustrate the plaintiff, if he wins the suit, in executing the decree. It is only on being satisfied as above that the Court would call upon the defendant to furnish security and pass an order of conditional attachment.

11. In para 11 of the above judgment it was further found that being an extraordinary power, the Court has to act with care and caution. The order shall not be passed on a mere assertion by the plaintiff that the defendant is attempting to dispose of the whole or part of his property or to remove the whole or part of his property from the jurisdiction of the Court. The court has to satisfy itself on the basis of materials and its satisfaction should be reflected in the order. In para 12, it was further held that in the affidavit the plaintiff has to state precisely the grounds on which the belief or apprehension which the plaintiff entertains that the defendant is about to dispose of his property or to remove the property rests. Mere verbatim reproduction of the ingredients in the affidavit would not be sufficient. The burden is entirely on the plaintiff to show that the defendant is attempting to dispose of the whole or part of the property or to remove whole or part of the property from the local limits of the Court in order to obstruct or delay the execution of the decree. It was further added that in a given case, it might be possible for the plaintiff to gather all the materials or information, but he should establish before the Court, the basis on which he claims that the defendant is intending to dispose of his property to obstruct or delay the execution of the decree.

12. The contention of the defendant that the order is bad as the above requirements are not fulfilled and that a speaking order which could be capable of objective test by the higher Court is necessary, may now be examined. Though it is clearly laid down in the bench decision aforementioned that the Court has to satisfy itself of the genuineness of the apprehension on the basis of materials which should be reflected in the order, it is not specified therein that a detailed order is expected in such matters. The learned counsel for the defendant could not bring to my notice any decision which would go to that extent. Of course, the Court's satisfaction has to be arrived at on the basis of materials and that should be reflected in the order; but that is different from stating that what is expected is a speaking order which could be capable of objective test. If the attachment is to be effective, the court has to act with promptness and it is not possible to expect that a detailed order would be passed and communicated to the parties in all case. In the instant case, the plaintiff clearly averred that the defendant has no assets in Kerala State and that if the amounts due from the garnishee are collected, the defendant, with the intention to obstruct or delay the execution of the decree that might be passed against it would utilise the amounts for its own purposes and the petitioner would be left with no alternative to realise the amount due to it and that to avoid irreparable loss and injury to the plaintiff an order of attachment before Judgment is essential for the sum of Rs. 7 crores.

13. When the plaint amount of Rs. 6,19,07,317/- is taken into account, Rs.7 crores mentioned in the petition as the attachable amount does not appear to be an exaggerated figure. Further, there are clear averments in the affidavit that the defendant has no other assets in Kerala State and that if the defendant collected the amount, recovery of the amounts would be impossible and that the collection of the dues from the G.C.D.A. itself is with the intention of obstructing and delaying the execution of the prospective decree. It cannot therefore be said that the averments in the petition are grossly inadequate, even if it does not reflect the ideal position, namely, the divulging of the exact source of information with regard to the proposal to withdraw the amount from the garnishee and the like.

14. I have already quoted at the beginning of this order the precise order passed by the trial Court. The mandatory requirement in Order XXXVIII. Rule 5 that the defendant has to be called upon to furnish security for a specific amount within a time limit is clearly complied with in the present case. Order XXXVIII, Rule 5 (3) clearly clothes the Court with the power to direct a conditional attachment of the whole or any portion of the property sought to be attached. Viewed from the legal requirements aforementioned, I do not think that the order dated 23-12-1998 calling upon the defendant to furnish security for Rs.7 crores or to appear and show cause why they should not furnish such security and in the meanwhile attaching the amounts through prohibitory order is defective. In fact subsequent events clearly show that if the Court had not acted promptly as it did, a failure of Justice would have resulted.

15. Point Nos 2 and 3 :-- Order XXXVIII, Rule 5(4) of the C.P.C. provides that if an order of attachment is made without complying with the provisions of Sub-rule (1), namely, satisfaction of the averments regarding the relevant apprehensions and without opportunity to furnish security, the attachment would be void. I have already found that on the averments available, the Court was justified in passing the particular order. What remains to be considered, therefore, is only the correctness of the argument of the defendant that the order is void as it was not served on the defendant and also because the form used for issuing notice is incorrect. To appreciate the argument of the learned counsel for the defendant it is necessary to quote the precise order that was served on the defendant on 23-12-1998 which is available in page 24 of the paper book made available by the defendant before this Court which reads as follows :--

"To

The abovenamed respondent (defendant).

Whereas the plaintiff has made the above application praying for attachment before judgment of the money mentioned in the schedule to answer any judgment that may be passed in their favour. Take notice that you the defendant is hereby directed to on or before 27-2-1999.

1. To furnish security of a sum of Rs. 7 crores.

2. To produce and place at the disposal of the Court when required, the entire money mentioned in the schedule hereunder sufficient to satisfy the decree that may be passed in favour of the plaintiff.

3. To appear and show cause why you should not furnish security.

Given under my hand and seal of the court this the 23rd day of December, 1998."

16. The order served on the garnishee is available in page 27 of the paper book the relevant portion of which reads as follows :-

"To

The above named garnishee (G.C.D.A.) and to affix at Court house.

Whereas on the application of the plaintiff in this suit that may be passed against, defendant be and is hereby prohibited and restrained until further orders from receiving from you a certain debt alleged now to be due from you to the said defendant, and that you, the said garnishee be and you are hereby prohibited and restrained until further orders from making payment of the said debt or any part thereof, to any person whomsoever or otherwise than into this court.

Given under my hand and seal of the Court this the 23rd day of December, 1998."

17. When the matter was argued before me once earlier, reliance was placed heavily on the Bench decision in Mohammed Hariss v. Fathima (1993) 1 K LT 558 in which it was held that though a Court has jurisdiction to attach property, in order to achieve that object it is bound to follow the procedure provided by law. A thing for which provision has been made must be done in that way or not at all. If no attachment comes into effect according to procedure prescribed, any step taken towards achievement of that object is nullity and has no effect on the property. From a reading of R. 5 of Order XXXVIII along with form No. 5 of Appendix-F, it is clear that Form No.5 is to be used for all orders under Order XXXVIII, Rule 5, whether it is attachment of immovable property or attachment of moveable property. No other form is prescribed for directing the defendant to furnish security for the plaint amount.

18. It was further held in the said decision that since the defendant had not been called upon to furnish security the order served on the defendant without complying with the requirements of Order XXXVIII, Rule 5(1) of the C.P.C. would be illegal, ultra vires and void under Order 38, Rule 5(4). It was also held that in such a case the decree holder cannot claim any benefit under that order; that an attachment before judgment does not stand on the same footing as an attachment in execution and that a party who does not object to the attachment before judgment is not estopped from objecting to its validity after decree.

19. I shall immediately refer to Form No.5 aforementioned which is quoted below :--

"No. 5. Attachment before judgment, with order to call for security for fulfilment of decree.

(Order 38, Rule 5)

(Title)

To

The (Amin) of the Court.

Whereashas proved to the

satisfaction of the Court that the defendant in the above suit.

These are to command you to call upon the said defendant on or before theday of19.....either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said.....and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of....19.... with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the court, this..... day of19

Judge."

20. A comparison of the aforesaid Form with the order actually served on the garnishee (already quoted) would reveal the following differences. In the prescribed form the direction is to the Amin of the Court whereas in the impugned order the direction is to "the above named garnishee and to affix at Court house." The mention of the direction to the defendant to furnish security is not available in the Impugned order; but then, admittedly, that is one communicated to the garnishee. The defendant was given separate notice of the I.A. itself. (See page 25 of the paper book). The direction in the impugned order is to the garnishee prohibiting or restraining from making the payment of the specified debt or any part thereof to any person whomsoever or otherwise than into the Court. Form No. 5, on the other hand, envisages a direction to the Amin to do two things. Firstly, he is to call upon the defendant to furnish security. There is no particular form prescribed by law whereby the Amin, to whom warrant in Form No. 5 is addressed, should call upon the defendant to furnish security. It appears, it is in the absence of any such Form that the Court resorted to issuance of separate notice calling upon the defendant to show cause against the prayer in the I.A. which mentions of security as well. By issuance of separate notice the Court has achieved effectively the purpose of the former portion of the Form No. 5 in substance. No information which the defendant could have

obtained if Form No. 5 was adopted strictly, is absent in the separate notice served on the defendant from Court. The second part of the Form No. 5 only calls upon the Amin to attach the specified property and to return the warrant to the Court with which the defendant is not directly concerned.

21. In the instant case, the order passed by the Court being interim in nature, there was no urgent need for physical confiscation of the money from the garnishee, especially because the opportunity for furnishing security was still there and it was in those circumstances that a prohibitory order was issued as seen quoted above from page 27 of the paper book. By service of the order in the particular Form the garnishee or the defendant is not prejudiced in any manner because no direction is contained therein, which is not authorised by the provisions of law. The fact that the Court has restrained payment is clearly communicated in the order served on the garnishee and the ambiguity, if any, available in the form prescribed is cleared in the specific order actually served on the garnishee. It may also be mentioned here that this, being attachment of a debt, it is Order 21, Rule 46 that applies regarding the manner of effectuating the attachment order and that Order 21, Rule 46(2) provides for service of the prohibitory order on the garnishee besides affixture in the Court's Notice Board. Both these requirements have been fulfilled here. There is no mandate in Order 21, Rule 46(2) that copy of the prohibitory order should be served on the defendant also. The contention of the defendant in that regard has hence to fail.

22. As I felt that the rigour of the Bench decision in Mohammed Hariss (1993 (1) K LT 558) regarding use of Form No. 5 and none other, affects justice being worked out, the matter was referred to a larger Bench for decision regarding its correctness. Accordingly, the Full Bench presided by the then Chief Justice decided the reference on 21-3-2000. In paras 5 and 6 of its decision it was held as follows :--

"5. The only question in relation to Order 38, Rule 5 which needs to be considered is whether any defect in a notice with Form No. 5 (Appendix-F) would render the order of attachment void. There is no reference to the form in Order 38, Rule 5. Use of forms in the appendices is dealt with in Order 48, Rule 3. Same reads as follows :--

"Order 48, Rule 3 :-- Use of forms in appendices :

The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purpose therein mentioned,"

The provision itself provides that the forms given, with such variations as the circumstances of each case may require, shall be used. Forms contained in the appendices to the Code do not form part of the Code. It is sufficient if there is substantial compliance with the forms. All rules of Court are nothing but provisions intended to secure proper administration of justice. It is therefore essential that they should be made to serve and be subordinate to that purpose. Procedure is hand-maid and not the mistress of law intended to sub-serve and

facilitate the cause of justice and not to govern or obstruct it. Any clerical or non-substantial error in the form which does not dilute the substance or the contents would not make it void. Otherwise substance would yield to form which is never the intention of law. Issuance of notice in a particular form is a matter of procedure. But that question is really of academic interest in the present case as we are concerned with the role of garnishee as provided in Order 21, Rule 46, CPC. The extent of objection that can be raised by the garnishee or the stand that can be taken by it is clearly mentioned in the provision itself. Therefore the garnishee cannot question or raise a dispute beyond what has been specifically provided in Order 21, Rule 46 and connected provisions.

6. It is to be noted that by Kerala amendment by Notification No. 23 dt. 9-6-1969, the provisions in Rule 46-A to I have been inserted in Order 21, Rule 46."

23. After answering the reference as above, the matter was sent back to the single Judge to take a decision by applying the guidelines laid down by the Full Bench.

24. In view of the clear finding of the Full Bench that any clerical or non-substantial errors in the Form would not render the attachment void, that substance would yield to the Form as such contingency is never the intention of law and that in the present case we are concerned with the role of the garnishee, I am of the view that there is absolutely no justification for a conclusion that the orders served on the garnishee and the notice served on the defendant are so defective as to render them void. As observed by the Full Bench, the question to be considered is only whether the order served on the garnishee is complied with or not. It is not open to the defendant or to the garnishee to contend successfully that the orders and notices served on them in this case are void and unenforceable.

25. It is admitted in the counter filed by the garnishee itself that after receipt of the prohibitory order of attachment before judgment, the garnishee has released the sum of Rs. 50 lakhs to the defendant. It is stated that this is due to a bona fide omission on the part of the Finance Department of the garnishee. The lapse. If any, in the matter is a matter of concern to the garnishee only and the remedial measures are to be taken by it internally. If there has been an omission, the person concerned can very well be held responsible therefor. Whatever that be, as far as the plaintiff is concerned, the mess within the organisation of the garnishee is ineffective and it is certainly entitled to enforce the order validly passed by the Court and properly served on the garnishee. There has obviously been lapses in this regard. The consequence of such a lapse is laid down in Order XXI. Rule 46-A of the Code of Civil Procedure. What is required is only to issue notice to the garnishee calling upon it either to pay into Court the debt due from them to the judgment debtor or so much thereof as may be sufficient to satisfy the decree or to appear and show cause why they should not do so. In the instant case, the garnishee has shown cause and that was only

the lapse on the part of the Finance Department. That is not a valid excuse at all.

26. In view of the direction in Order 38. Rule 7 of the CPC, the attachment before judgment has to be made in the manner provided for the attachment of property in execution of a decree. It is to be remembered here that though the manner of execution is for execution of a decree, it is not provided either in this provision or in any other provision of Order 38 that an attachment before Judgment will be treated as an attachment in execution of a decree. We are concerned, in the present case, with attachment of money in the hands of the G.C.D.A. as due to the defendant. It is Order 21, Rule 46 that applies with regard to the manner of attachment in such a case. The said provision directs that in the case of a debt not secured by a negotiable instrument or other movable property not in possession of the judgment-debtor, the issue of attachment shall be made by a written order prohibiting in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until further orders of the Court and in the case of other movable property prohibiting the person in possession of the property from giving it over to the Judgment-debtor.

27. It is clear from the said provision that what is contemplated is only a prohibitory order and that physical seizure or transfer of property to the Court is not envisaged at that stage. The reason is obvious. The question whether the plaintiff is entitled to get a decree as prayed for and if so, to what extent is a matter which is yet to be thrashed out in the prospective trial. The purpose of attachment before judgment is only to ensure that by the time the trial proceedings are over, the defendant does not walk away with the money thereby defeating the execution of the prospective decree. For achieving that object, it is not necessary that the property actually comes to Court at that stage. On the other hand, the purpose would be served well enough by ensuring that the person who owes the money or other property to the defendant does not handover or disburse the same and it is kept in tact with the debtor concerned.

28. It is well settled that attachment before judgment is a civil proceeding. Its effect is that it becomes part of the prospective decree when it is passed. But, nevertheless, it does not stand in the same footing as an attachment in execution for reasons already mentioned above. If any authority is required on the point, reference may be made to the decision in *S. Noordeen Vs. S. Thiru Venkita Reddiar and others*, and to *Mohammed Hariss v. Fathima* (1993) 1 K LT 558.

29. Yet another reason why the two attachments i.e., attachment before judgment and an attachment made in the course of execution cannot be equated may be found in Order(1996) 1 Ker LT 761 : 38, Rule 11A(2) of the CPC which provides that an attachment made before Judgment in a suit, which is dismissed for default, shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored. It is possible that the suit in which an attachment before judgment is made might happen to be dismissed for default and later on restored. In view of

the aforesaid provision, the attachment need not necessarily survive at the stage of final disposal of the suit unless the plaintiff is vigilant and ensures that with the restoration of the suit the attachment is also revived through appropriate orders of the Court whether through fresh attachment or otherwise.

30. It is true that if an attachment before judgment continues to be valid at the time of disposal of the suit, there is no need for fresh attachment at the execution stage and the steps can be pursued as though the attachment made before judgment is an attachment made during execution. Nevertheless, an attachment before judgment would become an attachment in execution of a decree only when the suit is decreed in favour of the plaintiff and an application for execution is made by the plaintiff based thereon before the execution Court. Order 38, Rule 11A(1) provides that the provisions of the Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of Rule 11 which takes away the need for fresh attachment.

31. The aforesaid provisions make it abundantly clear that though for certain purposes the attachment made before judgment will be operative subject to limitations mentioned above, it is not actually an attachment made in execution for all purposes even applying any legal fiction. It is also to be mentioned here that there is no provision in Order 38 analogous to Order 21, Rule 46-A which enables the Court to issue notice to the garnishee liable to pay the debt mentioned in the attachment order calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution or to appear and show cause why he should not do so.

32. A reading of the above provision would also indicate that it will be too premature to direct the garnishee to make over the payment of attached amounts to Court before a decree is passed. For eg :-- let us take a case where the decree ultimately passed is for a much smaller amount when compared to the plaint amount or the amount mentioned in the order of attachment before judgment. Order 21, Rule 46-A limits its operation to the amount due to the decree-holder sufficient to satisfy the decree and costs of execution alone. Such amount, especially the costs, would be known only when a decree is eventually passed and hence Order 21, Rule 46-A(1) cannot be put into operation as such at any time before the decree is actually passed from which the amount actually due to the decree-holder can be ascertained.

33. In view of the reasons aforementioned, I am of the view that though an attachment before Judgment would take effect the moment it is served and henceforth the garnishee would be prohibited from making over payment of the amounts to the defendant, nevertheless, the amount is to be called for into Court applying Order 21, Rule 46-A of the CPC only when an application for execution is actually filed pursuant to the decree that might ultimately be passed in the particular suit wherein the attachment before judgment is ordered and effected.

34. Viewed from the above perspective, the order impugned in C.R.P. Nos. 1472 and 1565/99 directing the garnishee to deposit in Court within 7 days the amount of Rs. 50,00,000/- (Rupees fifty lakhs only) forming part of the attached amount of Rupees 7,00,00,000/- (Rupees seven crores only) is premature and defective.

35. The garnishee has a contention that out of the amount disbursed by the garnishee to the defendant a sum of Rupees 21,81,000/-, was paid to the plaintiff and that the defendant has failed to comply with the direction of the garnishee to refund to it the full amount of Rs. 50 lakhs. If the defendant has failed to comply with the request of the garnishee, how the direction could be worked out is a matter left to the choice and discretion of the garnishee. Suffice it to say that as far as the plaintiff is concerned, the payment made by garnishee ignoring the attachment order will be of no effect and the garnishee will be liable to deposit the full amount as and when order is passed under Order XXI. Rule 46-B of the CPC.

36. I shall now sura up the reliefs granted in these C.R.Ps. while declaring that the attachment served on the garnishee pursuant to order in LA. No. 6424/98 would continue to be in force and holding that the payment of RS. 50,00,000/- made by the granishee to the defendant in the suit is irregular and not binding on the plaintiff, the order for deposit passed in I.A. No. 1708/ 99 is set aside. C.R.P. Nos. 1472 and 1565/ 99 are allowed to that extent. Fresh notice will be issued to the garnishee under Order 21, Rule 46-A(1) of the CPC at the execution stage and deposit need be made only then.

C.R.P. No. 1566/99 is found to be without merit and it is dismissed.