
(1952) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 4 of 2005

Jeevan Lal

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 30-07-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 95

Citation : AIR 1953 MP 90

Hon'ble Judges : R.B. Dixit, J;K. Chaturvedi, J

Bench : Division Bench

Advocate : Shiv Dayal, for the Appellant; Arora, for the Respondent

Final Decision : Allowed

Judgement

Dixit, J.—This is an appeal from an order passed by the District Judge of Shivpuri u/s 433, Gwalior Code of Civil Procedure, Samvat 1966 directing the attachment before judgment of certain properties of the, Appellant. On 30-1-45 the Respondent Central Bank of India Ltd. instituted a suit against the Appellant in the Court of District Judge, Shivpuri for the recovery of Rs. 17,407-6-6. On the same date the Plaintiff Bank put in an application u/s 433, Gwalior Code of Civil Procedure, stating that the goods on the security of which the Plaintiff had advanced certain monies to the Defendant and which the Plaintiff was seeking to recover in the suit, had been attached by the District Co-operative Bank of Shivpuri and that, therefore, the security given to the Plaintiff had become insufficient. Further that the Plaintiff had learned that the Defendant was thinking of selling his property and leaving the State territory. On these grounds the Plaintiff prayed that an order of attachment before judgment be granted of a house of the Defendant. The attachment was effected on 2-2-45. On the next day the Defendant-Appellant presented an application objecting to the attachment and praying to the Court that the attachment be set aside and he be awarded compensation in the sum of Rs. 1000 for the wrongful attachment. The learned District Judge, therefore, heard both the parties, recorded their evidence

and confirmed the order of attachment before judgment.

2. In this appeal, Mr. Shiv Dayal for the Appellant, contends that the order of attachment passed by the learned District Judge was not legal, because the Plaintiff had not stated in his application u/s 433, Gwalior CPC whether the Defendant was about to dispose of any part of his property or about to leave the local limits of the jurisdiction of the Court with the intention of obstructing or delaying the execution of any decree that might be, passed against him. It was said that on the evidence led by, the Plaintiff, it is not established that the Defendant was going to make alienations of his property after the filing of the suit, with intent to delay or obstruct the execution. Learned Counsel for the Appellant further said that as the Plaintiff had applied for an order of attachment on insufficient grounds, the Appellant was entitled to compensation.

3. The contention of the learned Counsel for the Appellant that the learned District Judge was not justified in confirming the order of attachment is, in my view, sound and must prevail. u/s 433, Gwalior Code of Civil Procedure, an order of attachment before judgment could be made only if the Court was satisfied that the Defendant with intent to obstruct or delay the execution of any decree that might be passed against him, (a) was about to dispose of the whole or any part of his property; (b) or was about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court; (c) or had left the local limits of the jurisdiction of that Court wherein his property was situated. The evidence led by the parties is to the effect that the District Co-operative Bank secured an order of attachment against the goods which had been previously pledged by the Appellant with the Respondent; that for some time before and after the institution of the Plaintiff's suit, the Defendant was absconding from Shivpuri as a case about a contravention of the Petrol Rationing was pending against him in Shivpuri; that after the institution of the suit, the Defendant-Appellant was in Gwalior; and that during his stay at Gwalior he met Mr. Khanna the Manager of the Plaintiff Bank and told him that in case he was allowed bail he would return to Shivpuri and dispose of his property. The Defendant Jeewan Lal did not enter into the witness-box to contradict the statement of Mr. Khanna, that the Defendant had met him and told Mr. Khanna of his intention to dispose of the property. The Defendant's witnesses tried to show that the properties which the Defendant possessed were greater in value than the amount at stake in the suit. From this evidence, the facts that the Defendant-Appellant at the time of the institution of the suit and after had left Shivpuri where his property was situated, and was also thinking of disposing of the property, are no doubt established. But the evidence does not establish the important fact that the Appellant left Shivpuri and intended to dispose of any part of his property with intent to delay or obstruct the execution of the decree, that might be passed against him. In the absence of the proof of this intention the learned District Judge was not justified in confirming the order of attachment. The order was, in my opinion, not legal. The question of setting aside the order of attachment is now of academic interest only as the Plaintiff's suit has been decreed and in the execution proceedings of

the decree in his favour, the Plaintiff has already secured a fresh order of attachment of the property.

4. As to the contention of the Appellant that he is entitled to compensation for this wrongful attachment, I think it must be rejected. It is quite true that the Plaintiff did not state in his application for attachment before judgment the intent with which the Defendant contemplated to leave Shivpuri or dispose of his property. But for awarding compensation whether u/s 439, Gwalior Code of Civil Procedure, or u/s 95, Code of Civil Procedure, 1908, the question to be decided is whether there were in fact no sufficient grounds for applying for attachment before judgment and not whether there were no sufficient grounds stated in the application. The words "insufficient grounds" mean without reasonable or probable cause. See "Roulet v. Fetterle" 18 Bom 717 at p. 720. Now it has been found here that the goods pledged with the Plaintiff were attached by the District k Co-operative Bank; that the Defendant had left Shivpuri and that he had told Mr. Khanna, the Manager of the Plaintiff Bank, that in case he was allowed bail he would return to Shivpuri I, and would dispose of his property. From these facts, it is clear that the Bank had reason to suspect that the Defendant intended to dispose (SIC) property with a view to delay or obstruct the execution of the decree that the Bank might obtain against him. The Plaintiff Bank, however, did not succeed at the hearing in establishing this intention of the Appellant. But (SIC) in itself does not entitle the Appellant to claim compensation from the Plaintiff. The Appellant must show that the Plaintiff was unjustified in suggesting to the Court on 30-1-45 when he procured the order of attachment that he was about to defeat the object of the suit in making alienations or by leaving Shivpuri.

The Appellant has not proved this fact at all. All that he did was to show that he had properties of greater value than the amount involved in the suit and that he left Shivpuri on account of Petrol Rationing Contravention case. The Appellant made no attempt whatsoever, to challenge the statement of Mr. Khanna that the Appellant had told him that he would return to Shivpuri and dispose of his property. It was incumbent on the Appellant to prove affirmatively that the attachment was applied for without reasonable or probable cause. On the facts established I am of the opinion that the Appellant had failed to make out the case which was necessary for him to establish that the Bank had no sufficient reason on 30-1-45 to suspect that the Appellant would dispose of his property to defeat the Plaintiff's claim. The Appellant's contention that he is entitled to compensation must, therefore, be rejected.

5. In the result, the order of attachment passed by the District Judge on 13-1-45 and confirmed on 29-7-1948 is set aside. To this extent this appeal is allowed. In the circumstances of the case, there will be no order as to costs of this appeal.

Chaturvedi, J.

6. I agree.