

(1995) 10 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Revision No. 413 of 1993

Mahesh Fabrics (P) Ltd. and Another	APPELLANT
Vs	
Nirma Corporation and Another	RESPONDENT

Date of Decision : 09-10-1995

Acts Referred:

Civil Procedure Code Amendment Act, 1968 — Order 21 Rule 41
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 41, Order 21 Rule 8, 115, 115(1), 39(1)

Citation : AIR 1996 Raj 111 : (1995) 2 RLW 547 : (1996) 1 WLC 633

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : M.N. Vyas, for the Appellant; Salil Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—The instant revision arises out of the order dated 16-4-1993 passed by learned Additional District Judge No. 1, Jodhpur rejecting objection of judgment debtor against execution of the decree transferred from the court of learned Second Joint Civil Judge Sr. Division) Narol from State of Gujarat.

2. The brief facts of the case in nut shell are that decree-holder Nirma Corporation, non-petitioner No. 1, obtained a money decree against the revisionists and non-petitioner No. 2 from the court of Second Joint Civil Judge (Sr. Division) Narol on 24-6-1987. The decree-holder applied to the Narol Court to transfer the said money decree to Jodhpur court for its execution.

3. In pursuance of the application moved by the decree-holder the Narol court on 19-12-1987 passed an order transferring the money decree to learned District Judge, Jodhpur for its execution who in turn transferred it to the court of learned Additional District Judge No. 1, Jodhpur for execution under Order 21, Rule 8 etc.

4. The learned Additional District Judge No. 1 Jodhpur on 24-4-1989 sent notice to revisionist judgment debtor Ganpatlal under Order 21, Rule 41, I.P.C. to

appear and disclose on oath his assets before his court on 5-5-1989.

5. The revisionist judgment debtor after service of notice on him at his address at Jodhpur instead of disclosing on oath his assets he filed an objection raising various factual and legal grounds.

6. The learned Additional District Judge after hearing learned counsel for both the parties rejected the said objection filed by the revisionist judgment debtor by his impugned order dated 16-4-1993 holding that transferors court has satisfied itself that transferee court has territorial jurisdiction, therefore, it is sufficient to hold that the transferee court to which money decree has been sent for execution has territorial jurisdiction to execute the same. It is further held by executing court that the judgment debtor Ganapatlal was one of the defendants and as he resides at Jodhpur hence he had jurisdiction to execute the decree. The learned executing court has given cogent and convincing reasons in support of the aforesaid finding.

7. Aggrieved against the impugned order dated 16-4-1993 the revisionist judgment debtor has filed the instant revision before this Court which was admitted on 13-8-1993 and on the same day the judgment debtor obtained an ex parte ad-interim stay order as follows:--

"Meanwhile, further proceedings in pursuance of order dated 16-4-1993 of the Court below is stayed."

8. I have heard the learned counsel for both the parties at length and have critically perused the order impugned.

9. Learned counsel for Shri Salil Trivedi appearing on behalf of decree-holder raised a preliminary objection about maintainability of the revision. According to Shri Trivedi under amended Section 115, C.P.C. mere jurisdictional errors as contemplated under Sub-section (1) (a)(b) and (c) of Section 115, C.P.C. are not sufficient to entertain a revision unless it is further shown or established as contemplated under proviso (a) and (b) of Sub-section (1) of Section 115, C.P.C. to the effect that the order if it has been made in favour of the party applying for revision would have finally disposed-of the suit or other proceedings or the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made. According to Shri Trivedi since in the present revision the condition precedent contemplated under proviso (a) and (b) of Sub-section (1) of Section 115, C.P.C. are not attracted, therefore, the present revision is not entertainable.

10. In my considered opinion for entertaining a revision the condition stipulated under proviso (a) and (b) of Sub-section (1) of Section 115, C.P.C. are not required to coexist. If any of the conditions enumerated either under proviso (a) or under proviso (b) is satisfied the revision would be maintainable.

11. In the present case the learned counsel for the judgment-debtor is arguing vehemently before this Court that on plain reading of amended Section 39, C.P.C.

it is manifestly clear that Clause (a), (b) and (c) of Sub-section (1) only defines the circumstances under which a decree may be transferred for execution to another court and do not in any way restrict or limit the powers of the court to which a decree is transferred to proceed with the execution proceedings without deciding its territorial jurisdiction to try the suit at the time of making the application for transfer of decree to it.

12. According to learned counsel Shri M.M. Vyas, appearing on behalf of "revisionist judgment debtor the transferee court must stay its hands in case it finds that it does not have territorial jurisdiction to try the suit having regard to various provisions contained in the C.P.C.

13. It is true that the learned counsel for the revisionists is not challenging the pecuniary jurisdiction of the transferee court but he is emphasising that the transferee court which has passed the impugned order has no territorial jurisdiction to try the suit, therefore as a necessary corollary the executing court cannot issue notice to the judgment debtor under Order 21, Rule 41, C.P.C. Thus, according to the learned counsel for the revisionists in the present case the notice issued to the judgment debtor under Order 21, Rule 41, C.P.C. is without jurisdiction. Thus, in case the transferee court even lacks territorial jurisdiction it must stay its hands and report back of the transferor court under Order 21, Rule 5, C.P.C. informing it that it has no territorial jurisdiction to execute the decree. Thus if the argument of learned counsel for revisionist judgment debtor is accepted the execution proceedings before transferee court would be finally disposed of.

14. In my considered opinion in the present case apart from the jurisdictional errors as contemplated under Sub-section (1)(a)(b) and (c) of Section 115, C.P.C. proviso (a) of the aforesaid Sub-section (1) of said section is clearly attracted hence the preliminary objection raised about maintainability of the present revision is hereby overruled and the instant revision is to be decided on merits.

15. Learned counsel for the revisionist judgment-debtor Shri M. M. Vyas urged before me that when an objection about territorial jurisdiction is raised before a transferee Court it has no authority in law to depend upon the certificate issued by the transferor Court but is required to thoroughly examine and consider threadbare about its territorial jurisdiction. According to Shri Vyas in the present case the learned Judge has erred in holding that once the transferor Court has been satisfied about its territorial jurisdiction it is sufficient and the transferee Court is not required under law to decide it afresh about its territorial jurisdiction.

16. In support of his aforesaid argument the learned counsel for the revisionist judgment-debtor placed reliance on a decision rendered by a learned single Judge of Delhi High Court in the case of Manganese Ore (India) Ltd., Nagpur v. Mangilal Rungta, Calcutta, reported in AIR 1981 Delhi 114. Learned counsel for the revisionists has stated before this Court that he is adopting the reasons given

by the learned single Judge in the case of Manganese Ore (India) Ltd. (supra) as part of his argument before me.

17. With all respect at my command I am not able to subscribe the view taken by the learned single Judge in the case of Manganese Ore (India) Ltd. (AIR 1981 Delhi 114) (supra) holding that as a general rule the decree-holder must aver the facts which confer jurisdiction on the transferee Court to execute the decree and it is only then that the transferee Court may if such facts are controverted embark upon an enquiry to find facts giving jurisdiction to execute the decree or not. The learned single Judge further ruled that the transferee Court cannot launch a fishing enquiry under Order 21, Rule 41, C.P.C., to find facts giving jurisdiction to it where there is not even averment by the decree-holder that the judgment-debtor owns assets within its jurisdiction which can be attached or proceeded against. The learned single Judge has extended the rules of pleadings for executing the decree in a transferee Court.

18. It is true that the aforesaid proposition of law has been laid down by the learned single Judge in the case of Manganese Ore (India) Ltd. (supra) after scrutinising Sections 6, 15, 16, to 20, 39, 46 read with Order 21, Rule 5 and Order 21, Rule 41, C.P.C. but the mandatory provisions contemplated under Sections 21(3) and 21A and Order 21, Rule 7, C.P.C. had escaped the notice of learned single Judge. The decision rendered by the Hon"ble Supreme Court in the case of Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, was also not brought to the notice of the learned single Judge. In fact learned single Judge has decided the case of Manganese Ore (India) Ltd. AIR 1981 Delhi 114 (supra) on 17-8-1980 while the apex Court decided the case of Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, on 6-8-1981 hence the learned single Judge has no opportunity to apply the proposition of law enunciated by Hon"ble Supreme Court.

19. A close perusal of Sub-section (1) of Section 39 clearly provides that a decree can be transferred for execution to a Court of competent jurisdiction and Sub-section (3) which has been recently inserted by amending Act No. 104 of 1976 defines Court of competent jurisdiction for the purposes of Section 39, C.P.C. It is to be noticed that the words "Court of competent jurisdiction" in Sub-section (1) did not exist earlier which have been inserted by the aforesaid amending Act of 1976.

20. In view of the amendment inserted by Act No. 104 of 1976 this Court is called upon to interpret the expression "Court of competent jurisdiction" keeping in view the aim and object of the drastic amendments introduced under the provisions of C.P.C. to avoid delay in execution of the decree.

21. It is well to remember that there is a new school of thought according to which a traditional methodology of interpreting a statute with reference to intention of the Legislature should now be replaced by a new methodology of attribution of purpose. According to me the aforesaid school of thought is most

relevant in the present case while interpreting the newly inserted amendment under Sub-section (1) of Section 39, C.P.C. adding the expression "Court of competent jurisdiction" and explaining the same under Sub-section (3) of the said section.

22. It is known to all of us that there was a proverbial saying among the litigants public in this country that it is easy to obtain a decree in India but difficult to execute it. In my humble opinion in order to redress the said mischief the Legislature thought it proper to insert new provisions under Sections 39, 21, 21A of C.P.C. as well as under Order 21, Rule 41, C.P.C. which indicate that these amendments have been newly inserted in C.P.C. to curb public evil of delaying and stalling execution of a decree by a judgment-debtor and to effectuate public benefit to allow the decree-holder to enjoy the fruits of decree expeditiously and any interpretation contrary to it as suggested by the learned counsel for the revisionist judgment-debtor would be contrary to the aim and object of the aforesaid newly inserted provisions in C.P.C.

23. It is evidently clear from the reading of Section 39, C.P.C. that the Clauses (a), (b) and (c) of Sub-section (1) of the said section demarcates the circumstances under which a decree may be transferred for execution to another Court having nexus with Sections 6, 15, 16 to 20, 21(3) as well as Section 21A of C.P.C.

24. Thus Sub-section (1) of Section 39, C.P.C. clearly provides that a decree can be transferred for execution to a court of competent jurisdiction and Sub-section (3) thereof has been added by way of explanation to explain the connotation "Court of competent jurisdiction". Section 6 provides pecuniary jurisdiction and Sections 16 to 20 deal, with territorial jurisdiction of a Court while Section 21 of C.P.C. clamp strict terms and conditions to raise objection about territorial and pecuniary jurisdiction of a Court before any appellate or revisional Court in a case of suit while Sub-section (3) of Section 21 provides stringent conditions for raising objection as to the competence of the executing Court with reference to the local limits of its jurisdiction before any appellate or revisional Court.

25. The question about raising of territorial jurisdiction u/s 21 of C.P.C. came up for consideration before the apex Court in the case of Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, where Hon"ble Supreme Court ruled in para 3 which reads thus:--

"3. xxxxx In order that an objection to the place of suing may be entertained by an appellate or revisional Court, the fulfilment of the following three conditions is essential:

- (1) The objection was taken in the Court of first instance.
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.
- (3) There has been a consequent failure of justice.

All these three conditions must co-exist."

26. In the instant case nothing has been brought to my notice by the learned counsel for the revisionist judgment-debtor that once it is found by the executing Court that the judgment-debtor is residing at Jodhpur is not sufficient to confer territorial jurisdiction upon the executing Court within the meaning of Sections 16 to 20 of C.P.C. Nothing has been brought to my notice by the learned counsel for the revisionist judgment-debtor that upon service of notice on him under Order 21, Rule 41 if he appeared before the executing Court on the date fixed i.e. 5-5-1989 how discloser on oath his assets would have caused a consequent failure of justice.

27. In my humble opinion if the revisionist judgment-debtor has assets within the territorial jurisdiction of the executing transferee Court he ought to have stated honestly before the executing transferee Court and if he has no assets he ought to have straightforwardly stated before the said Court that he has no assets within the territorial jurisdiction of the said Court.

28. A dictionary meaning of the word "justice" given in New Lexicon Webster's Dictionary Encyclopaedic 1988th Edition means behaviour to oneself or to another which is strictly in accord with currently accepted ethical law or as decreed by legal authority. It is easily deducible from the dictionary meaning of the word "justice" that a litigant specially a judgment-debtor where a decree has been passed against him is required to be fair to himself and to decree-holder before a Court. This Court cannot afford to encourage a judgment-debtor to adopt an unfair behaviour towards decree-holder simply to delay the execution of decree. The judgment-debtor cannot be allowed by this Court to claim a vested right to delay the execution of decree by withholding discloser of his assets in pursuance of notice issued to him under Order 21, Rule 41, C.P.C.

29. In the present case the transferee executing Court has refused to consider about its territorial jurisdiction because according to it the transferor Court in its order dated 19-12-1987 itself held that the judgment-debtor resides and has property within the local limits of the jurisdiction of the transferee Court, therefore, it was thought proper by the transferor Court to send a certificate to the transferee Court under Order 21, Rule 6, C.P.C.

30. In order to appreciate the controversy raised in the instant revision it would be expedient to reproduce Order 21, Rule 7, C.P.C. which reads thus:--

"7. Court receiving copies of decree, etc. to file same without, proof. -- The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof."

31. From the above discussion I am of the opinion that cumulative effect of the mandatory provisions contemplated under Sections 6, 15, 16 to 20, 39, 21 and

21A of C.P.C. make it abundantly clear that inherent lack of jurisdiction cannot be treated at par with the territorial jurisdiction of the Court. In case of lack of inherent jurisdiction the Court which passed the decree or the Court which is executing the decree or the transferee Court where the decree has been transferred for its execution by transferor Court will go to the root of the case and make the exercise of that inherent lack of jurisdiction of such Courts either passing the decree or executing the decree within the meaning of inherent lack of jurisdiction null and void and in such a situation the objection can be raised whenever and wherever such decree is sought to be executed or even in collateral proceedings but in case of lack of territorial jurisdiction either in passing of the decree or in executing the decree by the Court which passed the decree or a transferee Court where the decree has been sent for execution the principle is not the same. The expression "inherent lack of jurisdiction" must be imbibed and understood as laid down by the Supreme Court in case of Seth Hiralal Patni Vs. Sri Kali Nath,

In my humble opinion within the meaning of Sub-section (3) of Section 21 of C.P.C. the lack of territorial jurisdiction cannot be raised at appellate or revisional Courts unless three conditions enumerated by the apex Court in the case of Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, are satisfied. If anyone of the conditions mentioned above is missing the appellate or revisional Court would refuse to entertain an objection regarding lack of territorial jurisdiction.

32. For the reasons stated above I am of the opinion that in the present revision as the revisionist judgment-debtor has failed to establish that non-disclosure of assets before the transferee Court in pursuance of notice served to him under Order 21, Rule 41, C.P.C. would occasion consequent failure of justice, therefore, his objection about lack of territorial jurisdiction of the transferee executing Court cannot be entertained and as such it is hereby rejected.

33. In my humble opinion the expression "Court of competent jurisdiction" inserted by amending Act No. 104 of 1976 under Sub-section (1) of Section 39 and explanation added to it under Sub-section (3) of the, said section means a Court in whose jurisdiction the property is situated or the judgment-debtor resides or carries on business. Wherever and whenever it is brought to the notice of the transferee Court where decree has been transferred for-execution by the transferor Court and the transferor Court has recorded a fact that within the local limits of the jurisdiction of the transferee Court either judgment-debtor resides or has property within its local limits is sufficient compliance of the provisions of Section 39 and the transferee Court need not to consider about its territorial jurisdiction for executing the decree as argued by the learned counsel for the revisionist judgment-debtor.

34. I am further of the opinion that the transferee Court has legal justification to depend upon the certificate issued by the transferor Court stating therein that either the property is situated within the local limits of the transferee Court or

the judgment-debtor resides or carries on business within its local limits is sufficient compliance of Section 39 of C.P.C. Once the aforesaid facts are stated in the certificate issued by transferor Court under Order 21, Rule 6, C.P.C. the transferee Court need not to consider about its territorial jurisdiction within the meaning of Order 21, Rule 7, C.P.C.

35. In the present case the revisionist himself had quoted in verbatim the certificate of transfer issued by the transferor Court on 19-12-1987 which speaks about the fact that the judgment-debtor resides and has property within the local limits of the jurisdiction of the transferee Court. The transferee Court in the present case has legal justification to depend upon the said certificate as contemplated under Order 21, Rule 7, C.P.C. and an argument contrary to it is not acceptable to me.

36. I am not impressed with the argument of the learned counsel for the revisionist judgment-debtor to the effect that rules of pleadings for executing the decree in a transferee Court should be extended and notice issued by the transferee Court under Order 21, Rule 41, C.P.C. to the judgment-debtor must be deemed to have been issued for roving and fishing inquiry. In fact aforesaid argument tantamount putting the cart before the horse to delay and stall the execution proceeding before the transferee Court which run counter to the aim and object of newly inserted provisions in C.P.C.

37. There is yet another reason to arrive at the aforesaid conclusion. Amendments introduced u/s 39 of C.P.C. "adding the expression "Court of .competent jurisdiction" has been added after decision of apex Court in the case of Seth Hiralal Patni Vs. Sri Kali Nath, where Hon"ble Supreme Court while interpreting Sections 21, 38 and 47, C.P.C. in para 4 ruled thus:--

"(4) xxxxx;

The validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it. But in the instant case there was no such inherent lack of jurisdiction.

xxxxx It is well settled that the objection as to local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case. Competence of a Court to try a case to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand an objection as to the local jurisdiction of a Court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure."

38. It appears to me that genesis of the various amendments inserted in various provisions of C.P.C. including Section 39, C.P.C. is based on the decision rendered by the apex Court in the case of Seth Hiralal Patni Vs. Sri Kali Nath, It is true that in the aforesaid case the jurisdiction about waiver of territorial jurisdiction was raised by the Court passing the decree but here in the present case the principle of waiver is not attracted inasmuch as for the reasons stated above the transferee Court to which the decree has been transferred for execution by the transferor Court itself has recorded a positive finding that since the judgment-debtor resides within its territorial jurisdiction, therefore, it has jurisdiction. In fact in the present case the statutory provisions under Sub-section (3) of Section 21 are attracted where the judgment-debtor is not entitled to challenge the territorial jurisdiction of the executing Court as he has miserably failed to establish that the order passed by the executing Court about its territorial jurisdiction has caused a consequent failure of justice. The instant case is squarely covered by the decision rendered by the apex Court in the case of Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, In order to avoid repetition and to maintain brevity it is suffice to say that for the reasons given in detail in the preceding paragraphs the judgment-debtor is not entitled to assail territorial jurisdiction of the executing Court in revisional jurisdiction before this Court.

39. Apart from the aforesaid facts in the present case the learned executing Court itself has recorded a positive finding that the judgment-debtor resides within its local limits and in support of aforesaid finding it has given cogent and convincing reasons with which I am at one.

40. The next contention of the learned counsel for the revisionist judgment-debtor Mr. M. N. Vyas before me is that no order under Order 21, Rule 41, C.P.C. could be passed asking the judgment-debtor to appear and disclose on oath his assets unless and until a show cause notice has been served on him asking why such an order be not passed.

41. In support of his aforesaid contention the learned counsel for the revisionist judgment-debtor placed reliance on a decision rendered by a learned single Judge of Bombay High Court in the case of Bachu Bai Manjrekar v. Raghunath Ghanshyam, Manjrekar, reported in AIR 1942 Bombay 100.

42. Before dwelling upon the aforesaid contention raised by the learned counsel for the revisionist judgment-debtor it would be necessary to notice the necessary amendments introduced under Order 21, Rule 41, C.P.C. Rule 41 has been renumbered as Sub-rule (1) and in Clause (b) the words "where the judgment-debtor is a Corporation" have been substituted for "in case of a Corporation". Sub-rules (2) and (3) have been newly inserted. Sub-rule (2) empowers the Court to call for an affidavit of assets of judgment-debtor as filing of such an affidavit would be much more effective with examination under Sub-rule (1) of Rule 41, C.P.C. Sub-rule (3) is a penal provision to secure compliance with the order under Sub-rule (2) of Rule 41 of Order 21, C.P.C. While Order 21, Rule 41,

C.P.C. was interpreted by the learned single Judge of Bombay High Court in the case of Bachubai Manjrekar and Another Vs. Raghunath Ghanshyam Manjrekar, the aforementioned amendments were not in existence. Even according to the learned single Judge in the aforesaid case an executing Court is competent to pass an order under Order 21, Rule 41 without issuing show cause notice to the judgment debtor in exceptional circumstances.

43. Thus from the aforesaid discussion it is apparent that after decision rendered by the learned single Judge of Bombay High Court in the case of Bachubai Manjrekar and Another Vs. Raghunath Ghanshyam Manjrekar, much water has flown and Order 21, Rule 41 has been drastically amended.

44. In my considered opinion the provisions contemplated under Order 21, Rule 41, C.P.C, does not speak about issue of show cause notice to the judgment-debtor and the procedure for issuing notice under the said rule has been made more effective to expedite the execution of a money decree. The meaning of the aforesaid rule is plain, therefore, effect must be given to it as provided in the rule by the Legislature itself.

45. It appears to me to evolve a principle of show cause notice asking from the judgment-debtor as to why such an order to disclose on oath his assets should not be passed under Order 21, Rule 41, C.P.C. would tantamount to usurpation of legislative power under the thin disguise of interpretation of Order 21, Rule 41, C.P.C. which is impermissible. Whenever and wherever there is a choice this Court is expected to choose the meaning which accords with reasons and justice. In the present case it would not be in accordance with the reasons and justice to issue a show cause notice to the judgment-debtor asking him why such an order be not passed is not necessary as argued by the learned counsel for the revisionist judgment-debtor.

46. At the risk of repetition it is made clear that issuing of show cause notice would amount to naked usurpation of the legislative power under thin disguise of interpretation of Order 21, Rule 41, C.P.C. which would run counter to the newly inserted amendments in various sections and the various orders and rule of C.P.C. with an aim and object to execute the decree expeditiously either by a Court which passed the decree or by a transferee Court where the decree has been transferred for its execution.

47. The last contention of the learned counsel for the revisionist judgment-debtor Shri M. M. Vyas is that the learned executing Court has erred in holding that since the notice was served at Jodhpur, therefore, the judgment-debtor must be deemed to be residing at Jodhpur is factually wrong and incorrect.

48. In support of his aforesaid contention the learned Counsel Shri Vyas placed reliance on a decision rendered by the Division Bench of this Court in the case of Suraj Karan and Others Vs. Sitaram and Another, where it is held that actual residence of the defendants at the time of commencement of the suit is to be considered for determining whether the Court has jurisdiction or not. The word

"residence" means the ordinary and general residence of the defendants and not a casual or occasional return of the defendants to their family homes where they and their families have been brought up.

49. Suffice it to say that aforesaid pro-position of law has been enunciated in the case of Surajkaran (supra) in a regular first appeal where it was open to the Division Bench to reappraise the oral and documentary evidence on record to arrive at a conclusion about the nature of the residence of the defendants as to whether it was casual or permanent but before a revisional Court the finding of fact recorded by transferee executing Court about residence of the judgment-debtor cannot be gone into as suggested by the learned counsel for the revisionist judgment-debtor even if it is found to be erroneous inasmuch as before a revisional Court reappraisal of evidence is not possible.

50. In the present case the executing Court has recorded a positive finding about residence of the revisionist judgment-debtor to the effect that he is residing within the territorial limits of its jurisdiction is based on analytical discussion of the material available on record with which I am at one. The revisionist judgment-debtor is not legally entitled to assail the aforesaid finding of fact recorded by the transferee (transferor?) executing Court on the basis of material available on record.

51. It is made clear that a man may have more than one place of residence at the same time living some times at one and some time at another place of his residence and during his temporary absence each house though empty would be treated to be his residence for the purpose of territorial jurisdiction as contemplated u/s 20 as well as Sub-section (1)(a) of Section 39 of C.P.C. provided there be an animus revertendi. In the present case nothing has been brought to my notice or nothing was brought to the notice of the transferee executing Court that the judgment-debtor in the present case has no animus revertendi to reside at his residence at Jodhpur, therefore, for the purpose of territorial jurisdiction Jodhpur could also be treated to be his place of residence and an argument contrary to it is not acceptable to me.

52. In abundant caution it is further made clear that the residence of the judgment-debtor as well as existence of assets is not open to be challenged before the transferee Court where decree has been transferred for its execution and, there is a reference in the certificate issued by the transferor Court that the judgment-debtor is residing within the territorial limits of the transferee Court and he possessed assets within its territorial limits. In the present case a close scrutiny of the certificate dated 19-12-1987 issued by the transferor Court to the transferee Court clearly indicates that the revisionist judgment-debtor is residing and also possessed property within the territorial limits of the transferee Court and as such the transferee Court can depend on the aforesaid certificate as contemplated under Order 21, Rule 7, C.P.C. unless of course the transferee Court records reasons in writing to differ from the facts mentioned in the certificate itself. In the present case the learned executing transferee Court has

not committed any error in recording his own finding about residence of the revisionist judgment-debtor and has also not committed any error in depending on the certificate issued from the transferor Court on 19-12-1987.

In view of the facts and circumstances stated above in the present case it cannot be said or can be argued that the transferee Court has issued notice under Order 21, Rule 41, C.P.C. for roving and fishing inquiry.

Consequently, the instant revision lacks merit and it is hereby dismissed with cost assessed to Rs. 2,000/-.