

(1987) 02 BOM CK 0045

In the Bombay High Court

Case No : Summary Suit No. 2274 of 1983

Malpani Brothers (Firm)

APPELLANT

Vs

Ramjidas Shyamlal Saboo and another

RESPONDENT

Date of Decision : 03-02-1987

Acts Referred:

Citation : (1987) MhLj 223

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : N.G. Thakkar with N.H. Vaishnav, for the Appellant; N.S. Chagla, Asstt. Govt. Pleader, for the Respondent

Judgement

H. Suresh, J.—This matter appears before me in the following circumstances :

2. On 29-6-1984 the Plaintiffs obtained a decree as against the Defendants. It is a money decree. The Plaintiffs obtained a warrant of attachment on 5-12-1984 and they lodged the same in the Office of the Sheriff on 14-1-1985. On 24-1-1985 the warrant was sought to be levied. At that time, the Judgment Debtor offered to settle the Plaintiffs' claim. Hence the warrant was not levied. Thereafter, the warrant was returned unexecuted to this Court, after the expiry of a period of one year with the remark "Time expired, the warrant is returned unexecuted upon the defendants." It appears that the Judgment Creditors (i.e. the Plaintiffs) recovered a sum of Rs. 1 Lakh during this period i.e. to say 15-2-1985 and 3-8-1985.

3. Thereafter since the Defendants were not paying any further amount, the Plaintiffs Advocates filed a precipe dated 30-7-1986 for entering part satisfaction. The Office wanted the Plaintiffs to produce a "poundage certificate." Thereupon, the Plaintiffs applied to the Sheriff on 23-9-1986 for issue of such a certificate as provided under Rule 476 of the High Court Original Side Rules. The Sheriff then demanded his poundage, which the Plaintiffs thought they were not bound to pay. Thereupon the Sheriff made a report dated 16-10-1986 to this Court,

seeking directions of the learned Judge. That is how this matter has appeared before me.

4. Mr. N. G. Thakkar appearing for the Plaintiffs, submitted that since the warrant was not levied and no seizure was effected, the Plaintiffs were not bound to pay any poundage to the Sheriff. As against this, the Sheriffs Office contended that since the warrant of attachment was lodged in his office and since the bailiff had gone to the Defendants for the purpose of levy of execution, whether the attachment was levied or not, his Office was entitled to the poundage as provided under the Rules. It was also pointed out that it was always the practice of (he Office of the Sheriff to demand poundage in such circumstances also and such poundage had been realised in the past.

5. After hearing Mr. N. G. Thakkar for the Plaintiffs, and the Deputy Sheriff in person, I felt that under the existing Rules there was no justification whatsoever in the Sheriffs demand for the poundage wherever no attachment was levied. However, any such order, if passed, would naturally affect the revenue of the Government, I thought, in the circumstances, it is proper that I should hear (he Government also. Accordingly, a notice was issued to the Office of the Government Pleader and thereafter Mrs. Chagla appeared on behalf of the Government and made her submissions. She submitted that the practice which was in existence should not be disturbed and that in any event the Sheriff would be entitled to the poundage.

6. At the outset, my reaction was that the notion "poundage" itself was anachronistic and I wish the Rule had been totally deleted, it is rather surprising that after a heavy Court fee is paid and a decree is obtained, the Plaintiff should still pay a further poundage, which is nothing but a commission for the purpose of executing a decree through the office of the Sheriff. This is one of the Anglo-Saxon legacies which has continued without any justification whatsoever. In the past, it is possible that the Sheriffs Office was not paid any salary as such and perhaps it was not a part of the Department of the Government, and in the absence of any other machinery for the purpose of executing a money decree, since the parties had to necessarily go through the Office of the Sheriff, the Sheriff was justified in demanding some commission by way of his fees. Today it is totally different. The Deputy Sheriff is an officer of the Government and all the staff and the bailiffs are paid their salaries. Whatever fees they are entitled to for the purpose of executing a decree, they can certainly take it, but there can be no justification whatsoever for the purpose of demanding a commission over and above the fees and costs which the Sheriffs Office collects. However. I am not in a position to strike-off that part of the Rule which relates to poundage. I hope that our Rules Committee will seriously reconsider this part of the Rules, and delete the same.

6A., In any event, on a correct interpretation of the Rules, which I will refer to hereinafter, the Sheriff has no right whatsoever to demand any poundage in cases where the attachment is not levied. The relevant Rules in this behalf are

the following and which are as under :

"474. (1) In cases where a person is arrested or property is attached, the party or the Advocate on record for the party at whose instance the arrest was made or the attachment levied shall be liable to the Sheriff for his fees or poundage, as the case may be.

(2)1 Any amount received by the judgment-creditor from the judgment-debtor in full or part satisfaction of a decree or order in respect of which a warrant of arrest or a warrant of attachment has been executed shall be presumed to have been realised under the warrant, if the Warrant is merely suspended and not dead.

(3) Where the execution-creditor or his Advocate on record receives direct any installment or any other sum ordered to be paid by the judgment-debtor in full or part satisfaction of the decree or order, he shall file a precipe in the Sheriffs office informing him of the payment made.

(4) The Advocate on record shall be responsible for filing this precipe, if the payment has been made through his office or he has been informed of it by the execution-creditor."

"475. When an order is passed releasing a judgment-debtor or raising an attachment, the Advocate on record To the party at whose instance the order is made shall file a certified copy thereof in the Sheriffs Office and shall inform the Sheriff whether there has been any satisfaction, compromise or settlement and, if so, for what amount and also whether poundage has been paid in respect thereof."

"476. Where warrants in execution have been lodged with the Sheriff, no satisfaction in full or in part of any decree or order in any suit or matter shall be entered thereon without the production of a certificate of the Sheriff that no poundage is due to him."

7. The Table of Fees which provides for payment to the Sheriff and which relates to poundage is as follows :

"5. Poundage on every debt levied by execution including an attachment before judgment or in the event of the claim being satisfied, compromised or settled upon the amount of such satisfaction, compromise or settlement..... Respondent."

(Page 283 of the High Court Original Side Rules.)

Mr. Thakkar submitted that these Rules also clearly state that it is only where "the property is attached," the Sheriff can demand poundage. Mrs. Chagla relied on Rule 476 of the said Rules and submitted that the said Rule does not speak of attachment of properties or arrest of persons but it only speaks of warrants in execution having been lodged with the Sheriff. She, therefore, submitted that if a warrant is lodged in the Office of the Sheriff, whether the said warrant is executed or not, the Sheriff can claim poundage.

8. I am afraid, that cannot be the construction of the said Rule. What the said Rule says that if a warrant is lodged in the Office of the Sheriff and thereafter a satisfaction of the decree in full or part has to be entered into in the Office, such as entry will not be made without production of a certificate from the office of the Sheriff that no poundage is due to him. It does not say that the Sheriff can demand his poundage and then only he can issue a certificate that no poundage is due to him. If in a given case, no poundage is due to him, he (i.e. the Sheriff) must issue such a certificate. It could be that the warrant is just lodged in the Office of the Sheriff and no further attempt whatsoever is made for the purpose of executing the decree or executing the warrant of attachment, and after a period of one year the warrant is returned and in between, out of Court, the Judgment-Debtor pays some amount to the Decree-Holder and the question arises as to making an entry with regard to the satisfaction of the decree. Certainly in such a case, there is no question of payment of any poundage. Mrs. Chagla says that in the present case the bailiff had gone to the place of the Judgment-Debtor. That does not mean that without seizure of the properties, the Sheriff can demand poundage. He is entitled to his fees and expenses as provided under "The Table of Fees", but not to any poundage.

9. The plain meaning of the words "Poundage on every debt levied by execution" would be the relevant factor. In that connection, I must compliment Mr. Thakkar who has done a good job in trying to trace the meaning of the said words. He has drawn my attention to an English Judgment in the case of Thomas vs. Sheriff of Middlesex, reported in 1899 (1) Queen s Bench Division 460, and the relevant portion is as follows :

"Poundage is a fee which is given by the statute of Elizabeth. Now, the language of the statute left it an open question whether the Sheriff was entitled to poundage, because the word was simply "levy". It was decided ? I forgot the name of the case ? even earlier than Miles vs. Harris, that the word "levy" in the statute meant "turning, the goods into money"; and Erle C.J., in giving judgment, said : "The question is, whether a seizure of goods under the fi. fa. is a levy within that statute. I am of the opinion that the Sheriff has not levied so as to be entitled to poundage under that statute, until the goods seized have been turned into money."

Mr. Thakkar has also looked into the meaning of the word "levy", which would all indicate "actual seizure". The relevant passage from Halsbury's Laws of England in Volume 17 (4th Edition) at para 446 is as follows :

"446. Sheriffs remuneration. The sheriff is entitled to (1) poundage, and (2) certain fees and expenses allowed him by statute or order of court under statutory authority, but no other remuneration or charge. In execution for money, the sheriff, in order to become entitled to his poundage, must levy (namely seize) and get the money. If he does not seize, he is not entitled to poundage, even though the money is paid or tendered to him after the writ has been delivered to him for execution."

Then again, in Volume 42 (4th Edition) at para 1147, it is stated :

"The Sheriff is also entitled to poundage where, after seizure, a payment is made by the debtor of a third person under the compulsion of the writ and the plaintiff agrees to withdraw the sheriff from possession in consequence of the compromise between the parties."

Therefore, it is clear, despite any contrary practice, poundage can be levied only where there is actual attachment or seizure.

10. In the circumstances, I am of the view that the Plaintiffs are not liable to pay any poundage to the Sheriff against the amount received by them against any money decree where such payments have been received without the actual attachment of the properties of the judgment-debtor. It is only where actual seizure is effected or where actual attachment is levied and thereafter if any amount is realised, the Sheriff under the existing Rules can demand poundage.

11. I, therefore, direct the Sheriff to issue a certificate to the effect that no poundage is due to him, within a fortnight of the service of this order, so as to enable the Plaintiffs to enter satisfaction or part satisfaction of the decree as desired by them.