

(1915) 08 CAL CK 0024
In the Calcutta High Court

National Bank of India, Ltd.

APPELLANT

Vs

A.K. Ghuznavi

RESPONDENT

Date of Decision : 02-08-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 41

Citation : 34 Ind. Cas. 287

Hon'ble Judges : Chaudhuri, J

Bench : Single Bench

Judgement

1. A question has arisen in connection with this matter as to the procedure to be followed and the requisites for obtaining an order under Order XXI, Rule 41, which corresponds to Order XLII, Rule 32, of the English Supreme Court Rules of 1883. In England an application has to be made by summons before a Master in Chambers. If the debtor has appeared to the writ by a Solicitor, the summons must be served at the address for service, and an affidavit to that effect is necessary. Although our Order XXI, Rule 41, is an amplification of Section 219 of Act VIII of 1859 modified by Section 267 of Act X of 1877, cases under it are rare. In fact a careful search among the records of this Court has resulted in the discovery of three cases only. It appears that those applications were made on verified tabular statements in the form directed by Order XXI, Rule 11, Sub-clause (2), and were ex parte. In the case of In Re: Premji Trikumdas 17 B. 514, the application appears to have been made ex parte. Our Court has framed no special rules with reference to this matter, and I must, therefore, hold that the present application, which was made ex, part on a verified tabular statement, is in order.

2. The defendant has been served with the order for his examination, and has now appeared by Counsel and urges that the order should be set aside. As our procedure allows such an order to be made ex parte, I am of opinion that it is open to the Court to hear the objections of the person summoned, before he is actually examined. In the Bombay case above cited, the party ordered to be

examined applied on summons to have the order set aside. I think that procedure should ordinarily be followed. I have, however, treated this as an application to set aside my original order, and, as the plaintiff Bank was prepared to go on with the matter on that basis, I have not required a formal written application.

3. Counsel for the judgment-debtor has urged that the order should be set aside, as the decree-holders have not shown what steps they have taken to enforce the decree and the result thereof; that in fact they have taken no steps at all; that the Court should not make such an order before the usual methods of execution are exhausted. He relied upon a passage in Edwards on Execution to that effect (Edition 1888), which does not appear to be based upon any reported decision. I find no such statement in Anderson on Execution (Edition 1889). I, therefore, look upon the passage cited as an expression of the writer's opinion. The object of the rule is to obtain discovery for purposes of execution to avoid unnecessary trouble in obtaining satisfaction of money-decrees. It is a useful rule, but orders for discovery may operate harshly against the party directed to give discovery and ought not to be lightly made. An order for personal examination is likely to operate still more harshly and cause unnecessary harassment and obviously ought not to be made, unless the Court is satisfied about the bona fides of the application and urgent necessity for it. It appears to me that it can be made at any stage of the execution proceedings, and keeping in view the 3 observations [have made, such applications ought not to be discouraged. They may perhaps be usefully encouraged to prevent unduly dilatory, troublesome and expensive execution proceedings. I do not agree with the view that it should only be made when all other methods have been exhausted.

4. Counsel for the judgment-debtor has strongly urged that the decree-holders do not appear to have taken any trouble to find out for themselves what properties the defendant has, they have not shown that there is any difficulty in finding them out; that their allegations about his liabilities are vague; and that, upon the materials before the Court, their apprehension that the decree may prove infructuous, is baseless. I quite agree that the enquiries made by the decree-holders were perfunctory and that, without much trouble or expense, they could have got particulars, In connection with this point I must note the fact that I was not prepared to make the order on their tabular statement, which omitted to state the grounds of belief and sources of information. We do not accept such verification, and I, therefore, asked for fuller particulars, when an additional affidavit was filed. But even now it does not appear to me to be satisfactory. I have no reason to doubt the bona fides of the application, but I am not satisfied that there is any difficulty in obtaining sufficient particulars about the property belonging to the judgment-debtor by an inspection, for instance, of the Collectorate Records of Mymensingh. I think the application has been put forward hastily--perhaps in view of the approaching long vacation. The judgment-debtor has also urged, without questioning the jurisdiction of the Court to make such an order, that the defendant lives and has his properties outside the local

jurisdiction of this Court, and as the decree must eventually be transferred to a District Court for execution, the application is premature. I do not think so. In order to obtain a transfer to a District Court the decree-holders have to swear that there are properties in that District, which is, to my mind, a ground for making such an application before applying for the transfer. The defendant has through his Counsel offered to give particulars of his property to the plaintiff: Bank and the Bank has offered to treat the information as confidential, but Counsel has asked me to decide his application on its merits without reference to the offer made. I have, in consideration of the facts before me, decided to withdraw the order at present. The defendant has not appeared personally, and we have not his personal affidavit. An affidavit by his agent that there is no reason to apprehend that his principal is likely to alienate his properties, is not satisfactory. Taking all the circumstances into consideration, I make no order for the costs of this application.

5. This order will not affect any future application, but I hope it will not be necessary.