
(1959) 03 BOM CK 0003
In the Bombay High Court
Case No : Appeal No. 215 of 1957

Parikh Jivanlal Manilal

APPELLANT

Vs

Shah Chhitalal Chunilal and Another

RESPONDENT

Date of Decision : 09-03-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 95

Citation : AIR 1960 Bom 326 : (1959) 61 BOMLR 1254

Hon'ble Judges : Tarkunde, J;Datar, J

Bench : Division Bench

Advocate : N.V. Karlekar, for the Appellant; N.R. Oza and S.B. Vakil, for the Respondent

Judgement

Datar, J.

(1) This is an appeal against an order made by the Civil Judge, Senior Division, of Baroda, on an application filed by one of the defendants in the original suit under S. 95 of the CPC for awarding of compensation against the plaintiff on the ground that the plaintiff had got effected an attachment before judgment of his property without sufficient reasons. The learned trial Judge held that the defendant applicant had succeeded in showing that the attachment before judgment had been effected without sufficient reasons. He accordingly awarded an amount of Rs. 500 to the defendant applicant from the plaintiff.

(2) The application for attachment before judgment was made by the plaintiff on the same day on which he instituted his suit for an amount of Rs. 21,719-14-9 due on the foot of accounts. The learned trial Judge, before whom the application came for preliminary orders, granted an ex parte order for attachment before judgment. This ex parte order was however vacated after the defendant put in his objections in that application. Thereafter, on 4-2-1957 the defendant filed the application under S. 95 out of which the present appeal arises complaining that there was no reasonable and probable cause for the plaintiff to get the properties and houses, attached before judgment, and therefore he had suffered loss of

reputation. The learned trial Judge held that under the circumstances of the present case, the defendant would be entitled to an amount of Rs. 500 for the loss of reputation and mental injury which he suffered on account of the attachment before judgment.

(3) The plaintiff filed an affidavit stating that there were reasonable and probable causes which entitled him to get the order of attachment before judgment. He also filed an affidavit of one Bansilal Ambulal, who was his neighbour. Bansilal in his affidavit stated that when he had met the defendant in the Bazar of Dabhoi, the defendant told him that as the plaintiff was not allowing him to pay the amount by instalments and was not prepared to forego the interest, he would dispose of his properties and see how the plaintiff would recover any part of his claim. Sometime thereafter Bansilal went to the plaintiff and gave the information which had been given to him by the defendant. It was then that the plaintiff instituted his suit and made the application for attachment before judgment under the provisions of Order 38.

(4) Now, in an application filed under S. 95, the applicant has to prove that the attachment was applied for on insufficient grounds. The decided cases have taken the view that the words "insufficient grounds" are equivalent to "without reasonable and probable cause," and therefore it is for the plaintiff who applied for attachment before judgment to prove that the attachment was applied for and got affected on reasonable and probable grounds. The learned Judge was not inclined to believe the evidence of Bansilal Ambulal, who had filed his affidavit in the case. He observed that Bansilal was a stranger to the defendant, and it was not probable that the defendant could even have stated to Bansilal that in the event of no settlement being arrived at by the plaintiff with him he would dispose of his property and make it impossible for the plaintiff to recover his claim. In another place of his judgment, the learned Judge was inclined to hold that Bansilal was no better than a hireling. It appears that the Bansilal had also made an affidavit even at the time of the final hearing of the application. At that stage the learned Judge was inclined to hold that Bansilal had no relations whatever with the defendant and to reject his evidence. Under these circumstances, we do not find any fault with the learned Judge if he stated in the present application that he was not prepared to believe the affidavit of Bansilal. The learned Judge also took into consideration that the defendant owned as many as 235 acres of lands besides some houses at the village Tejgadh, and finally he came to the conclusion that there was no reasonable or probable cause for the plaintiff to make an application for attachment before judgment. On the whole, we are satisfied that his conclusion is right and no valid reasons are shown as to why we should differ, in appeal, from his appreciation of evidence.

(5) This brings us to the next question whether when the defendant has proved that the attachment was applied for and got effected on insufficient grounds, he would be entitled to compensation on that account. Section 95(1), so far as material, is as follows:

"Where, in any suit in which an attachment has been effected, it appears to the Court that such attachment was applied for on insufficient grounds, the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction."

"An order determining any such application shall bar any suit for compensation in respect of
attachment."

Now, Mr. Karlekar contends that the defendant has not proved that any expense or injury was caused to him by the attachment before judgment and therefore he would not be entitled to any compensation under the aforesaid section. The defendant contended that by the attachment he had suffered a heavy blow to his reputation or of any mental pain caused by any loss of reputation or of any mental pain caused to the defendant by the attachment. Further, he contends that the words "expense or injury" used in the section do not refer only to the loss of reputation or mental pain. They refer to some damage caused to the defendant by the attachment of his property. It is contended that the word "expense" unquestionably indicates that the defendant, in order to be entitled to compensation, must show that he sustained some pecuniary loss or damage by the wrongful attachment, and that the words "expense" and "injury" being analogous words having been used in the same context, the word "injury" must also receive the same import.

(6) In support of his contentions, Mr. Karlekar relied upon two cases of the Calcutta High Court. In Chandulal Siraogi v. Purna Chandra Paul, 39 Cal WN 915, it was held that damage to prestige or a feeling of humiliation is not an injury within the meaning of S. 95 of the CPC for which compensation may be awarded under that section for attachment before judgment of the defendant applicant's property on insufficient grounds, The learned Judge who decided that case observed:

"The claim must be in respect of some damage caused to him as the proximate result of the attachment, arrest or injunction which had been applied for on insufficient grounds."

This was the view which had been taken by a Division Bench of the Calcutta high Court in the case of Joharmull Chimanlal and Co. Vs. Iswardas Agarwalla, , and the learned Judge felt that he was bound to follow it in preference to the decision of the High Court of Madras. He observed:

"No doubt, the Madras High Court has given a very elastic interpretation to the word "injury" as used in the section, but there being decision of this Court

expressly dealing with this point, I have to follow that decision."

(7) The learned Judge also made a distinction between a claim for damages for malicious attachment in a suit property framed and an application under S. 95 where the matter had to be summarily investigated. But it may be noted that under subsection (2) of S. 95 an order determining an application under S. 95 shall bar any suit for compensation for such attachment.

(8) In the earlier decision to which he referred, a Division Bench of the Calcutta High Court held that

"in a motion for an inquiry as to the damages caused to the defendant by reason of the operation of an injunction restraining him from alienating or disposing of his Immovable and moveable property except in the usual course of business he must show that he was prevented from doing something which he could otherwise have been free to do. It will not do to say that this kind of injunction is a reflection on his character and upon his business stability and that the moment this injunction was pronounced and as a consequence of it nobody entered into any dealings with him, that his friends on the contrary began to break their contracts and failed to do their duty. He must show that he suffered loss by his inability to do one or more of the things which the injunction restrained him from doing and until some sensible case of that sort is put forward, it is unnecessary to direct an inquiry."

In this case, it appears that in an earlier judgment it was arranged that the defendant should be at liberty to apply by motion for an inquiry as to the damages caused to him by reason of the operation of injunction obtained by plaintiff, and it was also directed that he should state his case for damages and his claim and that the matter should be heard on the original side. When the defendant made his claim, it seems that he did not make any claim that could be entertained as arising out of or caused by the injunction. It was, however, stated by the defendant that the kind of injunction served upon him amounted to a reflection upon his character and upon his business stability, and that the moment this injunction was pronounced and as a consequence of it nobody entered into any dealings with him, that his friends on the contrary began to break their contracts and failed to do their duty. The learned Judges, however, took the view that the claim that the defendant had made could not be regarded as the proximate result of the order of injunction served upon him. They observed:

"In order to get an inquiry as to damages, he would have to show that he had suffered loss by his inability to do one or more of the things which the injunction restrained him from doing and, until some sensible case of that sort is put forward, it is unnecessary to direct an inquiry on materials of the character before us."

With great respect to their Lordships, it seems to us their Lordships were considering the case as it emerged from the order which had been passed at an

earlier stage, and that order was that the defendant should be at liberty to apply by motion for an inquiry as to the damages caused to him by reason of the operation of this injunction, and so far as the facts mentioned in the case under S. 95 of the CPC and that the defendant had made out a case of "injury" as having been caused to him by the order of injunction. It is not clear whether their Lordships' attention had been drawn to the words "expense or injury" occurring in S. 95.

(9) On the other hand, there are two decisions of the High Court of Madras which directly deal with the question arising in an application under S. 95. One is reported in *Palanisami Gounder v. Kaliappa Goundar*, AIR 1940 Mad 77, where the learned Judge took the view that there was nothing in the language of S. 95 to justify the inference that special damage need be proved in application under S. 95 for damages for wrongful attachment. The words "expense or injury" in S. 95 indicate that either the particular damage upon which a monetary value can obviously be placed or the more general damage which the Court endeavours with difficulty to assess in terms of money, is contemplated by the section. This view was followed in a subsequent decision of the same Court reported in *V. Srinivasaraghavan Vs. V. Sundararajan*, , where it was held that it was enough if general damage is proved such as mental pain, general loss of reputation, etc. Damage to prestige and humiliation suffered do amount to injury. We prefer to follow the Madras decisions and hold that the word "injury" in S. 95 includes also injury to reputation and mental pain, and when attachment is got effected on insufficient grounds, such attachment itself without more must be regarded as having caused the defendant at least such "injury" as to entitle him to general damages. In *Mudhm Mohun Doss v. Gokul Doss*. 10 Moo Ind App 563, their Lordships of the Privy Council held that in a case arising out of a suit filed by a third party for damages for wrongful attachment of his property wrongful attachment was actionable per se and that the plaintiff was entitled to ordinary damages although he did not prove any special damages.

(10) In the present case, we have held, agreeing with the finding of the lower Court, that plaintiff got the attachment before judgment effected wholly on insufficient grounds. If so, it was a wrongful attachment for which defendant would be entitled to compensation as by way of general damages. The unauthorised attachment interfering as it did with the common law rights of the defendant was itself an injury, actionable per se.

(11) Mr. Karlekar contends that "injury" as used in S. 95 must mean injury to the person or goods, and particularly so when the word "injury" follows the word "expense" in the same context. Now, injury, as is well known in the law of Torts, not only means injury to the body but also injury to the reputation or mind. We cannot also accept the contention of Mr. Karlekar that the two words "expense" and "injury" being analogous words are used each may be presumed to be susceptible of a separate and distinct meaning; for the Legislature is not supposed to use words without a meaning." (*Interpretation of Statutes*, Edn. 8,

page 276).

(12) Mr. Karlekar contends that there is no evidence to show as to what was the loss caused to the reputation, or what was the nature of the mental pain suffered by the defendant. In our view, we do not think that there is any need for further proof as to the nature of the injury which the defendant says he suffered on account of the wrongful attachment before judgment of his property. We have held that the illegal attachment itself constituted an injury within the meaning of S. 95.

(13) The learned Judge has held that although there was also an attempt to effect attachment before judgment of all the lands, for some reason or the other such attachment was not effected in regard to the lands. But there was an attachment in regard to the houses, and if the houses were improperly attached, then we are of the view that the defendant had sustained an injury, so as to entitle him to general damages.

(14) The learned Judge has awarded Rs. 500, though he has not given any reasons as to why he was inclined to hold that in the present case an amount of Rs. 500 as compensation would meet the ends of justice. If any reasons had been given, then in all probability we would have been reluctant to interfere with the quantum of compensation as awarded by the learned Judge. But in this case, it seems to us that the learned Judge overlooked the fact that the lands, though attempted to be attached before judgment, were not in fact attached, and there is also the evidence that the house property was not worth Rs. 39,000 and odd as stated in the panchakyas which appears to have been made at the time when the attachment was effected, but was about Rs. 7,900. Under these circumstances, we are inclined to hold that the amount as awarded was a little excessive, and we therefore reduce it to Rs. 200.

(15) With this modification, the appeal is dismissed. There will be no order as to costs.

(16) The cross objections also fail and are dismissed. There will be no order as to costs in the cross-objections also.

(17) Appeal and cross objections dismissed.