
(1950) 11 MP CK 0007

In the Madhya Pradesh High Court

Case No : Civil Revision No. 182 of 1950

Rameshwardayal Ramswaroop

APPELLANT

Vs

Bheemsen Dulichand

RESPONDENT

Date of Decision : 06-11-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 136

Citation : (1950) 11 MP CK 0007

Hon'ble Judges : Shinde, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Shinde, J.—This is an appln., in revision by the plaintiff. One Rameshwardayal filed a suit against Bhim Sen in the ct of the Civ. J. Second Class, Morar & filed an appln under O. 38. R. 5 for attachment before judgment on 30-8-1950. The learned Judge passed the following order on the same day:

Apparently the property to be attached was within the jurisdiction of the City Civ. J. First Class, Lashkar. Hence the Civ. J., Morar, sent a Parwana in the name of Nazir of the City Civ. J.s. Ct. Lashkar stating that security to the extent of Rs. 1100 be demanded from Bhim Sen the non-appct if he fails to do so, his truck No. 1007 M.B.C. be attached on identification of the appct., under O. 38, R. 5, that the Parwana be returned after compliance before 4-10-1960. In pursuance of that order, the truck was attached on 31-8-1950 & as the non-appct. refused to name a person in whose custody the truck might be given, it was given in the custody of the appct. Rameshwar Dayal on his furnishing security. On the second day, the non-appct. appeared before the City Civ. J. Lashkar & furnished security. On this the City Civ. J. Lashkar wrote to the Civ. J. Morar that the truck be returned to the non-appct. When the papers were received in the Ct. of the Civ. J. Morar the appct. objected to the return of the truck on the ground that the appct. had to incur expenses to bring the truck to Morar & that the security

furnished by the non-appct. was insufficient. The Civ. J. Morar overruled his objections stating that the non-appct. is willing to pay the expenses incurred by the appct. & that the security having been verified by the Ct, there is no reason to doubt its sufficiency. Against this order the appct. has filed this revn.

2. Two contentions have been urged on behalf of the petnr. in this case. One is that the learned Civ. J. Morar did not decide the question of jurisdiction of the City Civ J."S. Ct. Lashkar to take security after the truck had been attached. The second is that the decision of the lower Ct. with regard to sufficiency of security is wrong.

3. From the perusal of the record, I find that these are not the only irregularities in the proceedings of the lower Ct. The entire proceedings under O. 38 R. 5 are ultra vires. The order of the lower Ct. reproduced above indicates that the learned Judge passed an order of attachment & fixed the date for filing any objection with regard to the attachment. This order of attachment appears to be unconditional as there is nothing to show in the order that it is conditional. An unconditional order cannot be passed unless the debt is directed within a time to be fixed either to furnish security or to show cause why he should not furnish security and within the prescribed period he fails either to show cause or to furnish security. Unless & until such an opportunity, is given to the debt, an unconditional order of attachment can not be issued, (Vide Sourendra Nath Mitra and Another Vs. Sreemati Tarubala Dasi, . If the order passed by the learned Judge be considered to be a conditional order of attachment it must be accompanied by an order directing the debt either to furnish security or to show cause why he should not furnish security within a prescribed period. If a conditional order is not accompanied by such a direction to the debt such an order is ultra vires. Vide Abdul Karim v. Nurmahomed, AIR 1920 Cal 526 : (57 I.C. 907), Dular Singh Vs. Ram Chander and Another, But the order of the lower Ct. does not contain any direction to the debt either to furnish security or to show cause why he should not furnish security, nor has the order prescribed any period. The order passed by the lower Ct. therefore, is in direct contravention of the provisions of O. 38 Rr. 5 & 6, C. P.C. & hence the order is clearly ultra vires.

4. The learned Civ. J. has also acted illegally in issuing Parwana in the name of the Nazu of the Ct. of City Civ. J. First Class, Lashkar If the property to be attached is within the jurisdiction of another Ct. then the proper procedure is to make an order of attachment & send a copy to the Dist. J's Ct. within whose jurisdiction such property is situate Vint S. 136, C.P.C. & it is the Dist. Ct. that will cause attachment to be made by its own officer or by a Ct. subordinate to itself & inform the Ct. which made the order of attachment. The procedure adopted by the lower Ct. is therefore clearly against the provisions of S. 136, CPC.

5. As during the course of arguments these irregularities have come to my notice I consider it necessary in the interest of justice to exercise the revisional powers suo motu & set aside the entire proceedings of the lower Ct. The Civ. J. Morar

has acted illegally is the exercise of his jurisdiction & hence it is a fit case to exercise revisional powers suo motu. As I propose to quash the entire proceedings, it is unnecessary to express any opinion on the contentions raised by the appct.

6. In the result I dismiss the petn for revision & exercising the revisional powers suo motu get aside the entire proceedings taken under O. 38 R. 5 & direct that the Civ. J. should proceed to dispose of the appln. for attachment before judgment according to law. Parties to bear their own costs.