

(1959) 09 AHC CK 0020
In the Allahabad High Court
Case No : Ex. First Appeal No. 119 of 1954

Smt. Sushila Devi

APPELLANT

Vs

Madan Mohan and Another

RESPONDENT

Date of Decision : 15-09-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1960 All 547 : (1960) 30 AWR 102

Hon'ble Judges : A.P. Srivastava, J

Bench : Single Bench

Advocate : K.C. Saksena, for the Appellant; K.L. Mishra, for the Respondent

Final Decision : Allowed

Judgement

A.P. Srivastava, J.—This is an appeal on behalf of the decree-holder. The decree-holder obtained a decree against Madan Mohan the judgment-debtor and got the decree executed. She prayed that a certain amount which had been deposited by the judgment-debtor in his Saving Bank Account at Agra Post-office be attached and the Postmaster be directed to pay the amount in Court for the satisfaction of her decree. The Postmaster showed cause and objected. He said that the amount that was lying with him in the judgment-debtor's account really stood pledged with the Chief Secretary of the East Punjab Government and till it was released from the pledge the decree-holder could not be allowed to get it. The learned Civil Judge who was executing the decree then discharged the notice which he had issued under Order XXI, Rule 132 (sic) of the CPC saying

"It seems to me that there are intricate questions involved in this affair which can best be tried in a regular suit I am not willing to exercise the discretionary power under Order 21 Rule 133 C. P. C. in this case. The decree-holder may choose his other remedies. I discharge the notice under Order 21, Rule 133 C. P. C. with costs to O. P."

The decree-holder has come up in appeal and it is contended on her behalf that

the view taken by the learned Civil Judge was entirely unjustified.

2. Rules in respect of garnishee orders have been framed by this Court and are to be found in Rules 131, to 140 of Order XXI of the C. P. C. Under Rule 131 if the decree-holder wants to proceed against a garnishee, a notice has to be issued to the garnishee requiring him to appear before the Court and show cause why he should not pay or deliver into Court the debt due from or the property deliverable by him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the cost of the execution. When the notice is served and the garnishee does not appear or does not show cause, under Rule 132 the Court may pass an order directing the garnishee to comply with the terms of the notice and on such an order execution may issue as though such an order was a decree against the garnishee. Rule 133 then provides:

"If the garnishee disputes, his liability the Court instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon the determination of such issue shall pass such order as shall be just."

Rule 139 provides that if the liability of the garnishee has been tried and determined the order have the force of a decree.

3. The rules relating to garnishee orders are to be found in Order XXI That means that they relate to execution of decrees. Order XXI and the rules contained in it are therefore to be interpreted keeping in view Section 47 of the Civil Procedure Code.

4. What is provided in Rules 132 and 133 appears to be that if a notice is issued to the garnishee and he either does not appear to contest the notice or appears and raises some objections which are obviously untenable it is open to the executing Court at once to pass an order under Order XXI, Rule 132 C. P. C. directing the garnishee to comply with the terms of the notice. Such an order will be an executable order. If on the other hand the garnishee raises some serious objections and the Court feels that the case cannot be immediately decided by passing an order as contemplated by Rule 132, what the Court has to do is to direct that the questions raised by the garnishee would be tried as if they were issues in a suit. Those issues should then be framed and tried. The order under Rule 132 would then be passed keeping in view the decisions on the issues so framed. Rule 133 does not empower the Court to direct the decree-holder or the garnishee to file a separate suit so that the issues raised may be decided in that suit. The use of the words "as though it were an issue in a suit" makes it quite clear that the issues have to be tried in the same way as issues in a suit are tried but they are to be tried in the Execution Department itself. Section 47 C. P. C., clearly contemplated conversion of an execution proceeding into a suit if it becomes necessary. Under Rule 133 therefore the issues must be framed in the garnishee proceeding itself and tried as if they were issues in a suit. The learned Civil Judge was thus not correct in his view that the decree-holder could be

directed to file a separate suit in order to get the point raised by the garnishee decided and that the points could not be decided in the Execution Department itself. The learned Civil Judge thought that he had some discretionary power under Order XXI, Rule 132 and in exercise of these powers he could compel a decree-holder to file a regular suit. The rule confers no such powers. The only discretion that the learned Civil Judge had under the rule was to frame an issue about the point raised by the garnishee" and to decide it as if it was an issue in the suit.

5. The view taken by the learned Civil Judge was therefore clearly incorrect and his order can not be upheld. The appeal is consequently allowed. The order of the learned Civil Judge is set aside. The case is sent back to him for proceeding according to law, bearing in mind the observations made in this judgment. Costs hitherto incurred will abide the final result.