

(1975) 11 AHC CK 0043
In the Allahabad High Court
Case No : Civil Revision No. 1313 of 1972

The Motor and General Finance Limited	APPELLANT
Vs	
Meedu and Others	RESPONDENT

Date of Decision : 26-11-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58(1)

Citation : AIR 1976 All 204

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : S.N. Verma and S.K. Verma, for the Appellant; J.N. Agrawal and N.C. Rajvanshi, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, J.—A bus was attached on 13th February, 1972, in Execution Case No. 8 of 1972. Opposite Party No. 1 was the decree-holder and opposite party No. 2 the judgment-debtor in that execution case. An objection was filed on 26th August, 1972, by the applicant in the present revision under Order 21, Rule 58 of the Civil PC claiming that it was the owner of the bus and that the opposite party No. 2 was just a hirer. The case of the applicant was that the opposite party No. 2 had failed to pay the instalments as contemplated under the hire-purchase agreement and the ownership of the bus all along continued with the applicant. This objection seems to have been put up for orders on 28th August, 1972. It was dismissed on that date by the following order:--

"Heard Sri Ramesh Chand for the objector. The attachment was effected on 13-2-1972. It appears that the objections have been filed with undue delay and the delay is unnecessarily and designedly made. Therefore the objections should not be investigated and are accordingly rejected summarily."

It is this order which is the subject-matter of the present revision.

2. Having heard learned counsel for the parties I am of opinion that the order

sought to be revised cannot be sustained. A copy of the objections filed by the applicant was placed before me. Paragraph 2 of the objection states that one Surjit Singh Johar is an inspector of the objector. The applicant company has its office at Asif Ali Road, New Delhi. In the objection it was stated that Surjit Singh Johar was resident of 1912, Pataudi house, Darya Ganj, Delhi. Paragraphs 11 and 12 of the objection are to the effect that it was on 11th of August, 1972, that Surjit Singh Johar aforesaid came to know of the various proceedings relating to the said bus. He thereafter gave information in this behalf to the applicant. The matter was scrutinised and files were got inspected and it was only then that the objector came to know about the attachment proceedings. It was further stated that the objections were being preferred at the earliest possible opportunity and they were not at all delayed. No notice was issued of this objection and after hearing the counsel for the objector it was summarily rejected by the order quoted above. It would be seen that no limitation is prescribed for filing an objection under Order 21, Rule 58 of the Code of Civil Procedure. The Court would, however, be justified in view of the proviso to sub-rule (1) of Order 21, Rule 58 not to make any investigation into the claim made by the objector if it considers that the claim or objection was designedly or unnecessarily delayed. The proviso is not to the effect that the Court would be justified in not making any investigation if the claim or objection was simply delayed. The delay must have occurred either designedly or unnecessarily. "Designedly" means by design, purposely, or intentionally. In *Agrawal Pathshala Mohalla Mandi Bans, Moradabad Vs. Karim Bux and Others*, it was held:--

"I agree with the learned counsel for the petitioner that when there is no time limit a reasonable time has to be considered and when the objection was filed within five days of the knowledge it could not be considered to be unnecessarily and designedly delayed. In considering the question of designedly and unnecessary delay the learned Munsif has not applied his mind to this aspect at all. It is true that he couched his order in the same words as have been mentioned in the proviso to Order 21, Rule 58, CPC. There is nothing on the record to suggest as to how he came to that conclusion. There does not appear to be any basis in evidence for the conclusion arrived at by the learned Munsif."

A perusal of the order sought to be revised makes it amply clear that here too the learned Addl. Civil Judge apart from couching his order in the same words as have been mentioned in the proviso to Order 21, rule 58 C. P. C., has not cared to give any reason for his conclusion that the objection was designedly or unnecessarily delayed.

3. It was urged by learned counsel for the opposite party that in *Agrawal Pathshala Mohalla Mandi Bans, Moradabad Vs. Karim Bux and Others*, notice had been issued on the objection initially and it was dismissed under the proviso on the date of final hearing and this constituted a distinguishing feature. It is true that in *Agrawal Pathshala*'s case the objection was dismissed after notice had initially been issued on it but in my opinion it will not make much difference even

if the objection has been dismissed summarily in case the order makes it clear that the presiding officer passed the order without applying his mind and without giving any reason for his conclusion. A finding of a court of law has to be based on some material on record. It cannot just be on surmises. If the hiatus between the date of judgment and the filing of the objection was alone material, then the words "designedly or unnecessarily" would lose their significance. The objector, as pointed out above, gave certain reasons for the objection being filed on 26th August, 1972, and not earlier. The proceedings for attachment were going on in a court at Muzaffarnagar. On the facts stated in the objection it was apparent that the applicant had its office at New Delhi. It was not a party to the suit or decree which was under execution. Prima facie, the objection did make out a case for its not being filed immediately after the attachment.

In case the Additional Civil Judge was not satisfied with a mere objection he should have called upon the objector to substantiate the facts stated in the objection by filing either an affidavit or by producing some other evidence. He could also have dismissed the objection provided there was some other material on the record on the basis of "which he could come to the conclusion that the objection was designedly or unnecessarily delayed. By not taking recourse to either of the two alternatives referred to above the Additional Civil Judge committed a manifest error in dismissing the objection just by quoting the words of the proviso to Sub-rule (1) of Order 21, Rule 58. Civil Procedure Code.

4. In the result, the revision succeeds and is allowed and the order of the Additional Civil Judge dated 28th August, 1972, is set aside. He will now dispose of the objection in accordance with law and in the light of the observations made above. The parties will bear their own costs. The record of the court below will be sent down forthwith so that the objection is now decided without any further delay.