

(2000) 03 KAR CK 0104

In the Karnataka High Court

Case No : Regular First Appeal No. 105 of 2000

United Breweries Ltd.

APPELLANT

Vs

Karnataka Bank Ltd. and Others

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46

Citation : (2001) 104 CompCas 230

Hon'ble Judges : K. Sreedhar Rao, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sreevatsa Associates, for the Appellant; Y.V. Parthasarathi, for the Respondent

Final Decision : Allowed

Judgement

1. The appeal is filed against the order passed in exhibit No. 631 of 1991 on the file of the 19th Additional City Civil Judge, Bangalore. The appellant is the garnishee. The first respondent, Karnataka Bank, is the decree holder and the other respondents in the appeal are the judgment debtors.

2. The material facts relating to the case are stated thus: The first respondent decree holder obtained a decree against the judgment debtors in O. S. No. 1759 of 1988 by virtue of the compromise entered into between the parties. An application came to be made under Order 21, Rule 46 for issuance of prohibitory order against the garnishee, the revision petitioner, for a sum of Rs. 5,66,365.66, pursuant to which the garnishee deposited the amount in the court after contest. Subsequently, the decree holder made an application for directing the garnishee to deposit the accrued interest liability payable under decree in a sum of Rs. 13,70,555.70. The trial court after hearing the objections, directed the garnishee to deposit the amount of Rs. 13,70,551.70. Being aggrieved, the garnishee filed the appeal.

3. The short questions that arise in the appeal are : (1) whether the liability of

the garnishee extends to the entire liability of the judgment debtor or (2) whether it is restricted to the amount mentioned in the prohibitory order and the notices issued under Order 21, Rule 46 of the Civil Procedure Code.

4. The provisions under Order 21, Rule 46 of the CPC provide for attachment of money and other movables belonging to the judgment debtor, in the possession of the garnishee by issuance of notice, to the garnishee in the format provided in Appendix "E" in Form No. 17 as under:

form No. 17

Attachment in execution

Prohibitory order. Where the property consists of debts, not secured by negotiable instruments.

(Order 21, Rule 46)

(Title)

To

Whereas..... has failed to satisfy a decree passed against..... on the day of 19 in suit No..... of 19 It is ordered that the defendants be, and is hereby, prohibited and restrained until the further order of this court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely and that you, the said be and you are hereby, prohibited and restrained from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this court.

Given under my hand and the seal of the court this day of

19

Judge

5. Whereunder for a specified amount, a prohibitory order is issued to the garnishee, restraining him from making payment of the said amount or debt to the judgment debtor. If the garnishee disputes the liability, he has a right to be heard in the matter if the court affirms the liability of the garnishee under Rule 46(f) and the payment made by the garnishee, on the notice issued under Rule 46(3) or Rule 46A(3), it would be a valid discharge.

6. Herein in the instant case, on perusal of the records in execution case, discloses prohibitory order was issued against the garnishee for a sum of Rs. 5,66,375.60 only, which was disputed. The trial court after hearing both the parties ultimately, passed an order on July 31, 1995, directing the garnishee to deposit the said amount, pursuant to which, the amount has been deposited.

7. Subsequently, the present application came to be made for deposit of Rs.

13,70,551.70 being accrued interest amount payable on the principal amount.

8. On going through the impugned order and the records of the trial court, it discloses that initially when the proceedings were instituted against the garnishee under Order 21, Rule 46, prohibitory order was taken only in respect of Rs. 5,66,375.60 only. Accordingly, the garnishee has paid the amount into the court. In respect of the balance of decretal liability to insist the garnishee to deposit the balance amount, appears to be totally unjustified. In the proceedings, instituted against the garnishee, a specified sum was mentioned for seeking prohibitory order. Accordingly, the garnishee has paid the amount, as directed after contest. If there is any amount belonging to the judgment debtor in the possession of the garnishee, a fresh proceeding have to be instituted again under Order 21, Rule 46 of the Civil Procedure Code. On the basis of earlier notice issued, it is impermissible to compel the garnishee to make good the entire balance decretal liability. The liability of the garnishee will be restricted to the amount mentioned in the notice and in the format as provided in Form No. 17 of appendix "E". In other words, on the basis of the earlier prohibitory order issued for a specific sum, the trial court was not justified in insisting on the payment of the entire decretal liability. The liability of the garnishee would be restricted only to the amount mentioned in the prohibitory order issued under Order 21, Rule 46. If any further sum available with the garnishee is required to be attached and realised, a fresh proceeding needs to be instituted under Order 21, Rule 46.

9. In view of the reasons and discussions made above, the appeal is allowed with costs. The order of the trial court is set aside.