

Himatmal Devchand Vs. Abdul Hakke

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Court : Mumbai

Decided On : Apr-10-1944

Reported in : AIR1945Bom76; (1944)46BOMLR757

Judge : Kania, J.

Appeal No. : Vadgaon Suit No. 569 of 1935 and Application No. 578 of 1940

Appellant : Himatmal Devchand

Respondent : Abdul Hakke

Judgement :

Kania, J.

1. This is a notice for rateable distribution under Section 73 of the Civil Procedure Code, 1908.

2. The plaintiff filed his suit in the Vadgaon Court and in due course obtained a decree for Rs. 2,084-10-0. The defendant is a railway servant and as such a public officer to whom the provisions of Section 60, Clause (i), of the Civil Procedure Code, apply. Other decrees were also obtained by other creditors in suits filed against the defendant. One such suit was filed by creditor No. 8 in 1934, another by creditor No. 3 in 1935. The other creditors appearing on this notice filed their suits in 1940-41. In execution of the decree obtained by the plaintiff money is

recovered from time to time from the railway company. Disputes have arisen between the parties because of the amendment of Section 60, Clause (i), in 1937 by Act IX of 1937. Before that amendment, under that clause, the salary of a public servant, when not more than Rs. 40 a month, was wholly exempted from attachment. If it was more than Rs. 40 but below Rs. 80 the salary was exempted from attachment up to Rs. 40, and in all other cases a moiety of the salary was exempted from attachment. By that amendment two important alterations were made. One was to raise the unattachable limit from Rs. 40 to Rs. 100 and made half the salary above that limit attachable. Moreover a proviso was added to this clause under which the attachment under any one decree could continue for twenty-four months only, and if there was another creditor his attachment could be operative only after the expiration of twelve months under another decree. It is further expressly made clear that once a decree was thus executed for twenty-four months no further attachment could be made under that decree. By Section 3 of Act IX of 1937 it was further provided that the amendments made by Section 2 of that Act (which I have summarised above) shall not have any effect in respect of proceedings arising out of suits instituted before June 1, 1937. It must be noticed, therefore, that if a creditor had filed his suit before June 1, 1937, he could enforce his decree by attaching half the salary above Rs. 80 and moreover his right to continue execution was not stopped at the end of twenty-four months. By reason of the amendment, creditors who filed suits subsequently had only restricted rights as mentioned in the amended section.

3. Having regard to this amendment the plaintiff contends that the operation of Section 73 in favour of the other creditors is also curtailed. He concedes that creditors Nos. 3 and 8 have the same rights as he has. He submits that in considering the operation of Section 73 in respect of this debtor the creditors have to be divided into two groups : one group includes the plaintiff and creditors Nos. 3 and 8, and the other includes the remaining creditors. The other creditors contend that Section 60 regulates the rights of the attaching creditor against the judgment-debtor, and it stands unaffected by the provisions of s., 73. If the conditions of that section (Section 73) are fulfilled, the Court has not to look at Section 60 to adjust the rights of the decree-holders applying for execution and claiming rateable distribution under Section 73. The corresponding sections in the previous Codes

were enacted as stated in *Hasoon Arm Begum v. Jawadoonissa Satoada Khandan* I.L.R. (1878) Cal. 29 and *Komachi Kather v. Pakker* I.L.R. (1896) Mad. 107 to prevent unnecessary multiplicity of execution proceedings. In the normal course each judgment-creditor having obtained a decree has to apply in execution for attachment and sale of the property of the debtor. If such property is already under attachment and if an order for sale has been made and thereafter another creditor applies to enforce his decree, he need not pass through the same process. It is with that object and to provide a cheap mode of execution that's 73 provides for equitable distribution of money held by the Court amongst creditors holding decrees against the same debtor, without separate proceedings. In *Bithal Das v. Nand Kishore* I.L.R. (1900) All. 106 Strachey C. J. observed as follows (p. 110) :

Now the object of the section is twofold. The first object is to prevent unnecessary multiplicity of execution proceedings, to obviate, in a case where there are many decree-holders, each competent to execute his decree by attachment and sale of a particular property, the necessity of each and every one separately attaching and separately selling that property. The other object is to secure an equitable administration of the property by placing all the decree-holders in the position I have described upon the same footing, and making the property rateably divisible among them, instead of allowing, one to exclude all the others merely because he happened to be the first who had attached and sold the property.

4. Bearing in mind these observations it is clear that the Legislature wanted to prevent unnecessary applications for attachment and sale, but the object of Section 73 has never been to give rights to decree-holders which they did not possess under their decree. In *Manicklal Venilal v. Lakha and Mansing* I.L.R. (1880) 4 Bom. 429 the argument that the two sections were independent was rejected and the Court held that the two sections must be read together and the rights under Section 73 could not override the rights under Section 60 of the Code. It seems to me that the argument of the plaintiff is perfectly equitable. By Section 73 the Legislature never intended to confer upon the decree-holder a right which he never possessed. In respect of suits filed after June 1, 1937, the decree-holder had never a right to attach the debtor's salary if the amount was less than Rs. 100 or more than half of the salary in excess of that figure. The decree-holder again

had no right to continue the execution of his decree for more than two years. It was pointed out that when the Legislature amended Section 60, Clause (i) it did not amend Section 73. From that it was argued that the Legislature contemplated that if the four conditions mentioned in Section 73 were complied with the decree-holders were all to stand on the same footing. In my opinion this argument overlooks the fundamental point that Section 73 was enacted to prevent only the multiplicity of proceedings and conferred no rights on the judgment-creditor to reach property of the debtor which he could never have reached. The right of the decree-holder against the judgment-debtor is controlled by Section 60. In *Krishnaji v. Vishnu* : AIR1938 Bom90 Beaumont C. J. sitting as a single Judge had occasion to consider the operation of Section 73. In that case a money decree was obtained against the defendant in a suit in which it was held that the defendant was an agriculturist. Another decree was obtained by another party against the same debtor, in which it was held that the debtor was not an agriculturist. The latter decree could be executed by the sale of the im-moveable property of the debtor, while the first decree by reason of Section 22 of the Dek-khan Agriculturists' Relief Act, 1879, could not be so enforced. In enforcement of the second decree an immoveable property of the debtor was sold and the holder of the first decree applied under Section 73 for a rateable distribution of the sale proceeds. He argued that he had complied with the terms of Section 73. That argument was negated. It was observed (p. 1213) :

In my opinion the application to the Court referred to in Section 73 must be one which, on the face of it, is entitled to succeed. If the decree under which the applicants claim is on the face of it one which could not be executed against the property represented by the money in Court, it seems to me that the Court cannot allow the applicants to share in the rateable distribution of such money.

5. The decision in *Manicklal Venilal v. Lakha and Mansing* was approved. Applying the same test to the present facts it seems to me that the other decree-holders could not have reached that portion of the money which the plaintiff and creditors Nos. 3 and 8 alone are in a position to reach. If so, they have no right to share by way of rateable distribution in that amount. On that ground I think the plaintiff's contention must succeed. The rateable distribution in respect of the amount in

Court mentioned in the1 certificate of the Prothonotary will have to be worked out in the light of this, judgment.

6. Creditor No. 2 to pay Rs. 75 to the plaintiff for the costs of this application.

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