

Dayabai and Co. Vs. Bapalal and Co.

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SooperKanoon Citation : sooperkanoon.com/338606

Court : Mumbai

Decided On : Jul-27-1967

Reported in : AIR1968Bom279; (1967)69BOMLR796; 1968MhLJ231

Judge : K.K. Desai, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 21, Rules 60 and 63

Appeal No. : Civil Revn. Appln. No. 886 of 1966

Appellant : Dayabai and Co.

Respondent : Bapalal and Co.

Advocate for Def. : F.S. Sukhia, Adv. i/b., ;Vaccha and Co.

Advocate for Pet/Ap. : P.N. Tolia, Adv.

Judgement :

(1) This is a revisional application on behalf of the attaching creditors. Attachment was levied on certain assets of Judgment-debtors original defendants on 12-11-1965. The Co-respondents in this revisional application claimed to be mortgagees of these very assets from a date much anterior to 12-11-1965. In the suit filed by them for enforcing their mortgage, an order dated November 9, 1965, was passed by the City Civil Court appointing Court Receiver as Receiver of these assets.

Their case was that on November 10, 1965, when the agent of the Court Receiver attended at the place where the assets were stored, judgment-debtors (mortgagors) obstructed delivery of possession. Ultimately, when on November 13, 1965, the Court Receiver's agent reached the premises, he found that the assets were attached on November 12, 1965. These mortgagees, therefore, by a chamber summons applied to the City Civil Court for raising of the attachment. The application was under Order XXI R. 60 of the Code of Civil Procedure. They claimed priority as mortgagees and also because the Court Receiver had been appointed at an earlier date. The summons was made absolute. This is a revisional application by the attaching creditors against that decision of the City Civil Court.

(2) The contention made by Mr. Tolia in support of the revisional application are on the merits of the priority in respect of these assets between the parties. It is impossible to hold that in making the summons absolute the City Civil Court proceeded with irregularity or illegality. Ordinarily revisional applications against the orders made on such summonses can never be sustained. This is so because applications under Rule 60 are decided summarily on affidavit and under Rule 63 of Order 21 remedy of a suit is provided in favour of the parties who fail at the hearing of such applications. Special limitation period is prescribed in that connection. In adopting the proceedings of this revisional application the attaching creditors were ill-advised.

(3) This revisional application is accordingly dismissed. Rule discharged with costs.

(4) Revision dismissed.