

**Hanuman Dutt Vs. Hazarimal**

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**SooperKanoon Citation :** [sooperkanoon.com/754477](http://sooperkanoon.com/754477)

**Court :** Rajasthan

**Decided On :** Nov-12-1957

**Reported in :** AIR1958Raj235

**Judge :** K.N. Wanchoo, C.J. and; D.S. Dave, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 54

**Appeal No. :** Ex. First Appeal No. 20 of 1954

**Appellant :** Hanuman Dutt

**Respondent :** Hazarimal

**Advocate for Def. :** Chandmal, Adv.

**Advocate for Pet/Ap. :** B.K. Acharya, Adv.

**Judgement :**

K.N. Wanchoo, C.J.

1. This is an appeal by the decree-holder in an execution matter.

2. The facts leading to this appeal may be briefly narrated. The appellant, Hanumandutt, decree-holder got a decree for Rs. 7195/15/-against the judgment-debtor, respondent Hazarimal from the court of Civil Judge, Ratangarh. In execution of that decree, he applied for attachment of a sum of Rs. 7200/- which

was due to Hazarimal from the Public Works Department at Bikaner.

A notice was issued under Order XXI, Rule 52 to the Executive Engineer, Bikaner, requesting him that the money may be held subject to further orders of the court. In response to this notice, the Executive Engineer sent the whole amount to the Court at Ratangarh and it was received there on 15-4-1952. The actual amount that remained in the hands of the court was Rs. 7191/-, the remaining being the transmission charges.

On the same day the judgment-debtor objected that the attachment of the money was illegal and, therefore, the court had no right to proceed with the execution so far as that money in its hands was concerned. This objection of the judgment-debtor found favour with the court and it refused to execute the decree against the money which was in its own hands. Consequently, this appeal.

3. There is no doubt that there was an irregularity in this case inasmuch as the Executive Engineer, Bikaner, was outside the jurisdiction of the court and the debt also appeared to have been payable outside the jurisdiction of the court. The proper procedure under the circumstances was for the court to transfer the decree to the court having jurisdiction in Bikaner so that this money might be attached.

By mistake, however, the court issued a notice under Order XXI Rule 52, C. P. C. to the Executive Engineer, Bikaner and that officer deposited the money in response to the notice in the court at Ratangarh. It was thereafter that the judgment-debtor objected that the attachment was illegal and, therefore, execution should not proceed against this money.

4. We are of opinion that the court below was wrong in refusing to proceed with the execution once the money had come in its hands. It has relied on two cases in particular, namely *Bissesserdas Daga v. Gabdumal Brahim*, AIR 1934 Nag 167 (A) and *Narendra. Prasad Sinha v. Maharani Janki Kuer*, AIR 1947 Pat 385 (B).

It failed to notice, however, that in the case of *Bissesserdas Daga* the objection to the attachment was made by the garnishee against whom the prohibitory order had been passed under Order XXI Rule 46, C. P. C. The case of *Narendra Prasad*

Sinha (B) is also, in our opinion, clearly distinguishable.

In that case the money never reached the court which was executing the decree. The judgment-debtor in that case made the objection before the money reached the court and after the Municipal Board had already given him a cheque to take away the amount which was in deposit with the Board. It may also be mentioned that it was with reluctance that one of the Judges agreed to the order proposed in Narendra Prasad Sinha's case (B).

5. The principle, to our mind, which applies in such a case is clear. Where there has been any irregularity in the attachment and as a result of that irregularity, the interest of a third party is affected, be the garnishes or a co-decree-holder, he can certainly object to the attachment, before the money is paid in court.

But, where after the money is paid into court, the judgment-debtor comes forward to object on the basis of some irregularity in the process of attachment, it is enough to say that the court should not allow the judgment-debtor to raise such an objection, for that would be allowing him to abuse the process of the court. Learned counsel for the respondent drew our attention to a number of cases in this connection. The earliest of these cases is *Abdul Gafur v. W.J. Albyn*, ILR 30 Cal 713 (C).

In that case also the court which had issued the notice under Order XXI Rule 52 had no jurisdiction over the officer to whom the notice had been issued. The officer originally did not object to the order under a misapprehension that the court had jurisdiction; but later when he came to know that the court had no jurisdiction, he objected to the order. It was then held that the officer could object to the order even if it is ten. It is remarkable, however, that the money had not been paid in by the officer before he objected to the notice.

6. The next case on this point is *Begg. Dunlop and Co. v. Jagannath Marwari*, ILR 39 Cal 104 (D). In that case the objection was made by the garnishee on the ground that the court had no jurisdiction over the place where the garnishee carried on business.

7. The third case to which reference was made is Surendra Nath Goswami v. Bansi Badan Goswami, AIR 1918 Cal 911 (E). In that case the objection was made not by the judgment-debtor, but by an assignee from the judgment-debtor. His case was that the assignment had been made to him in August 1915, while the money was actually sent by the officer to whom notice had been issued in March 1916. In those circumstances, his objection was upheld as the court had no jurisdiction over the officer to whom notice had been issued and the title to the money had already passed before it was sent By the officer to the court.

It is clear, therefore, that even where there is some irregularity, it is not the judgment-debtor who can be heard to make an objection after the money has reached the court. It would be a different matter altogether if the objection is made by the garnishee to whom notice is issued or is made by some other person who had acquired a title to the money before it was paid into the court.

We are, therefore, of opinion that as the money reached the court without any objection by the garnishee and as there is no objection by any third person claiming title to the money before it was made over to the court, the court is entitled to proceed in execution against the money which it has received.

The judgment-debtor cannot be heard to say that the court had no jurisdiction to proceed against the money which it had received and which is admittedly judgment-debtor's, because of some irregularity in the manner in which it reached the court.

8. We, therefore, set aside the order of the court below and direct that it should treat the money as attached and proceed to execute the decree against this money according to law. In view of the circumstances, we pass no order as to costs of this Court.