
(1965) 02 P&H CK 0034

High Court Of Punjab And Haryana At Chandigarh

Case No: Exe. First Appeal No. 39-D of 1961

Fancy Nets Ltd.

APPELLANT

Vs

Kishan Dass Khia Ram
and Others

RESPONDENT

Date of Decision: Feb. 9, 1965

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1, 47 , 96
- Provincial Insolvency Act, 1920 - Section 20, 52, 75

Citation: AIR 1966 P&H 479 : (1965) 2 ILR (P&H) 212

Hon'ble Judges: S.K. Kapur, J; D.K. Mahajan, J

Bench: Division Bench

Advocate: Sultan Singh, for the Appellant; H.R. Sawtney, for the Respondent

Final Decision: Dismissed

Judgement

1. This execution first appeal was referred to a Division Bench in view of the importance of certain questions involved therein.

2. Briefly the facts are that Fancy Nets Ltd. filed a suit for recovery of Rs. 15,000/- against Messrs Kishan Das Khia Ram and obtained an order for attachment before judgment of money belonging to the said Messrs. Kishan Das Khia Ram and lying with Delhi Hindustani Mercantile Association, respondent No. 2. The appellant succeeded in the suit and a decree for a sum of Rs. 15743.65/- nP. against Messrs Kishan Das Khia Ram was passed by the Bombay Court. An application was made for the transfer of this decree to Delhi which was allowed. The order of attachment before judgment was served on respondent No. 2 on the 20th of January, 1961, while the suit was decreed on 2nd February, 1961. After the transfer of the decree to Delhi the appellant filed an execution application for realisation of the attachment amount on 16th February, 1961, and notices were served on respondent No. 2 on the 20th of February., 1961. On 25th February, 1961, the respondent filed objections which were rejected by order dated the 8th of March

1961 and respondent No. 2 was directed to deposit the amount with the executing Court. On 21st of January 1961 a petition was filed at Delhi for adjudging the judgment-debtor as an insolvent and the said petition was admitted by the Insolvency Judge on 16th February 1961. On 22nd February 1961 the Insolvency Court appointed an interim receiver to take into possession all the assets of the debtor with the Delhi Hindustani Mercantile Association, respondent No. 2, and shop No. 5464, Chandni Chowk, Delhi. This appointment was made u/s 20 of the Provincial Insolvency Act. On 15th March, 1961, the interim receiver made an application u/s 52 of the Act that the property of the judgment debtor be delivered to him and on 22nd March 1961 the executing Court stayed the execution proceedings against the judgment debtor and directed the respondent No. 2 to pay the attached amount to the interim receiver. It is against this order that the present appeal is directed.

3. Mr. Sahni learned counsel for the respondent has taken a preliminary objection regarding the competency of the appeal. He submits that the competency of the appeal is to be determined on the basis of the provisions in the CPC since the impugned order is not one passed by an Insolvency Court. He submits that a receiver appointed u/s 20 of the Provincial Insolvency Act does not represent the insolvent and he has only such of the powers as are conferrable on a receiver appointed under the CPC 1908 as the Court may direct. Since such a receiver does not represent the judgment-debtor it cannot be said that the order determined the questions arising between the parties to the suit in which the decree was passed or their representatives within the meaning of section 47 and consequently an appeal u/s 96 of the CPC will not be competent. Mr. Sahni draws our attention to [Satyanarayan Banerji and Another Vs. Kalyani Prosad Singh Deo Bahadur and Others](#), wherein it was held that receiver appointed under a State under Order 40 Rule 1 is not the representative of any party within the meaning of Section 47. According to the learned counsel an interim receiver appointed u/s 20 merely operates to change the possession but does not affect the title of the property which continues to vest in those in whom it was vested when the appointment was made. It is well established that the receiver appointed under Order 40 Rule 1 of the CPC cannot be termed as a representative of the party to the suit. In *Ajodhya Roy v. Hardwar Roy* (1909) 9 C LJ 485 Mokerjee J. laid down two tests in order to determine whether a particular person is a representative of a party to the suit. They are--

"first, whether any portion of the interest of the decree-holder or of the judgment debtor, which was originally vested in one of the parties to the suit, has, by act of parties or by operation of law, vested in the person who is sought to be treated as a representative, and secondly if there has been a devolution of interest whether so far as such interest is concerned that person is bound by the decree."

4. Having regard to the above we are of the view that the Receiver appointed u/s 20 of the Provincial Insolvency Act cannot be termed as a representative of the party within the meaning of Section 47. The impugned order was passed by the executing Court, u/s 52 of the Provincial Insolvency Act which provides,

"Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall, on application, direct the property if in the possession of the Court, to be delivered to the Receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so delivered and the Receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge,"

An order u/s 52 of the Provincial Insolvency Act would not be appealable u/s 75 thereof as it would not be an order made in the exercise of insolvency jurisdiction, nor is an order u/s 52 appealable under Order 43 Rule 1.

5. In the result an appeal would be competent either u/s 96 Order 43 Rule 1, Civil Procedure Code.

6. It was contended by the learned counsel for the appellant that the order u/s 52 was itself without jurisdiction and therefore, even if the appeal is not competent it can be treated as a revision. The learned counsel submits that order u/s 52 could be made only where execution of a decree is issued against any property of a debtor which is saleable in execution and that the money lying with respondent No. 2 was not property saleable in execution. We are unable to agree to this submission. Debt is a chose-in-action and, therefore, a saleable property. Debt like any other property can be attached and sold. Only the mode of attachment may be different. Whereas attachment in case of moveable property is effected by actual seizure, a debt is attached by a prohibitory order. Reference in this connection may be made to Order 21 Rule 46 Civil Procedure Code. In our opinion there is no force in this contention. In the result the appeal fails and is dismissed. There will, however, be no order as to costs.

D. K. MAHAJAN J.

7. I agree.