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(1962) 01 AHC CK 0005

Allahabad High Court

Case No: Special Appeal No. 97 of 1954

British Transport Co. Ltd. — APPELLANT

Vs

Suraj Bhan and Others — RESPONDENT

Date of Decision: Jan. 15, 1962

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 46, 46, 51
- Evidence Act, 1872 - Section 65, 66

Citation: AIR 1963 All 313

Hon'ble Judges: V.D. Bhargava, J; Mithan Lal, J

Bench: Division Bench

Advocate: Vishwa Mitra, for the Appellant; B.L. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Bhargava, J.
This special appeal is directed against a judgment of a learned single Judge of this Court dismissing a second appeal arising out of an execution proceeding. One Suraj Bhan had obtained a money decree against one Sardar Singh. The decree-holder sought execution of the decree by attachment of various properties, one of them being an amount alleged to be payable to the judgment-debtor Sardar Singh by the appellant, the British Transport Co. Ltd. Delhi. This amount was said to have been payable as being due in respect of hire of a bus which had been leased out to the appellant company at a rate of Rs. 8/- per diem on behalf of Sardar Singh and Babu Singh, joint owners of the bus. It was further alleged that in the rent the share of Sardar Singh and Babu Singh was half and half, so that the appellant company was liable to pay rent at the rate of Rs. 4/-per diem to Sardar Singh. The decree-holder sought execution of the decree by taking garnishee proceedings in respect of the share of the hire money due from the appellant company to Sardar Singh. The application for obtaining the garnishee order was presented on 1st of June, 1942, by the decree-holder in the Court of Munsif, Agra, on the execution side. The

Court proceeded to pass orders for execution of the decree and in execution of the decree attached this debt alleged to be due from the appellant company to the judgment-debtor Sardar Singh.

On 30th November, 1944, the appellant company filed objections in the garnishee proceedings. It has been noticed by the learned single Judge that notice of the garnishee proceedings was served on the appellant company at a much earlier stage and the objections were filed after the lapse of a long time, so that they were belated, and even then the appellant company did not specifically deny the case of the decree-holder respondent that the lorry had been hired to the company at the rate of Rs. 8/- per diem. At that stage no objection as to the jurisdiction of the Agra Court to take proceedings against the appellant company was taken either. Subsequently another objection was raised that the Court at Agra had no jurisdiction to take garnishee proceedings against the appellant company. The Trial Court dismissed all the objections including the objections that related to the merits of the amount due from the appellant company to the judgment-debtor Sardar Singh. The appellant company then filed a first appeal which was dismissed by the Civil Judge of Agra. The company then came up in second appeal and the present special appeal is directed against the judgment dismissing the second appeal.

2. One of the points that had arisen in these proceedings was as to the liability of the appellant company to another party to these proceedings viz. the Central Finance and Housing Company Limited, as that party was claiming that this bus had been given to Sardar Singh and Babu Singh by that party under a hire-purchase agreement and there having been a breach of the agreement that party was entitled to the return of the bus as it had continued to be the owner of the bus and was also entitled to certain mesne profits. Mr. Shanti Bhushan, who has appeared on behalf of the appellant, has however, stated that, since then, the dispute raised by the Central Finance and Housing Company Limited has been finally settled by a decision of this Court in another appeal, as a result of which it has been held that Sardar Singh and Babu Singh were full owners of the bus and that the appellant company owed no liability to the Central Finance and Housing Company Limited. It was held that the appellant company was the lessee of the bus from Sardar Singh and Babu Singh.

3. In this special appeal two points have been urged before us by the learned counsel for me (Sic) first point urged is that the Court at Agra had no jurisdiction to take these garnishee proceedings and that the decision of the learned single Judge, that those proceedings were taken in exercise of jurisdiction vested in that Court, was not correct. The second point urged by the learned counsel is that the objection on merits, which was decided by the Trial Court, was based on admission of evidence which was not admissible under law and that was another error that had been committed by the lower Courts. These were the only two points that were urged by the learned counsel for the appellant before us.

4. So far as the first point is concerned, we have first to take notice of the findings of fact that have been recorded in this case. It appears from the judgment of the learned single Judge as well as the judgment of the two lower Courts that, when the objection as to jurisdiction was raised on behalf of the appellant company, the objection was on only one single ground, viz. that the appellant company was situated outside the jurisdiction of the Agra Court and consequently the Agra Court could not take these proceedings. The learned single Judge has held that the Agra Court was competent to take these proceedings on the ground that the contract under which the cent became payable by the company to the judgment-debtor Sardar Singh had been entered into at Agra and that the cent was also payable at Agra within the jurisdiction of the executing Court, so that that Court had jurisdiction to take these proceedings. Learned counsel wanted to urge that the finding that the debt was payable at Agra was vitiated, but we have not been able to find any material which would support the view that this finding was not correctly recorded. It is to be noticed that the appellant company never tried to put forward the plea that the executing court at Agra had no jurisdiction to take these proceedings because of the debt not being payable at Agra. That question appears to have arisen incidentally when dealing with the objection of the appellant company which was to the effect that that court had no jurisdiction because the appellant company was situated outside the jurisdiction of the executing court.

The executing Court held, on an examination of the evidence before it, that the contract between the appellant company and the judgment-debtor or with Babu Singh on behalf of the judgment-debtor had been entered into at Agra and further that the hire under that agreement was payable by the appellant company at Agra. This finding, having been recorded in so many words by the executing Court, does not appear to have been challenged in the first appellate Court where again the only ground taken about jurisdiction was that the executing Court had no jurisdiction because the appellant company was situated outside the jurisdiction of that Court. The Appellate Court in these circumstances did not enter into any discussion of the evidence on the question whether this debt by the appellant company was payable at Agra or not, nor did it have any occasion to record a finding on that point. The Court in fact proceeded on the acceptance of the finding on this point recorded by the executing Court and we are unable to hold that in doing so the Appellate Court committed any error. The second appeal by the learned single Judge had also to be decided on the acceptance of these findings of fact and we also in deciding this special appeal have to accept those findings.

5. The question of law that arises out of these findings is as to whether an executing Court has jurisdiction to take garnishee proceedings in respect of a debt payable within its jurisdiction to the judgment debtor, when the debtor of the judgment-debtor does not happen to be within the jurisdiction of that executing Court. The point for determination thus is as to whether the jurisdiction of the execution Court in such a case is dependent on the suits of the debt or on the suits of the debtor from whom the debt is payable to the judgment-debtor. It has appeared to us that on an examination of the CPC we must hold

that it is the suits of the debt that will decide the jurisdiction of the execution Court and not the suits of the debtor from whom the debt is payable to the judgment-debtor. The power of an execution Court to execute a decree is given in Section 51, C. P. C. where the Court is authorised to order execution of a decree by various means. One of the means of execution of a decree laid down in that provision of law is "by attachment and sale or by sale without attachment of any property".

In the case of garnishee proceedings, the first step that the execution Court has to take is to make an order of execution of the decree by attachment of the property against which the garnishee proceedings are sought. After such an order has been made the provisions of Order 21 of C. P. C. come into play for the purpose of carrying out that order. In the case of a debt not secured by a negotiable instrument like the debt in question, the appropriate provision applicable is Rule 46 of Order 21 of the Code of Civil Procedure. This rule lays down the manner in which the attachment is to be made. The provision applicable to the case before us is to the effect that

"in the case of a debt not secured by a negotiable instrument the attachment shall be made by a written order prohibiting, in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court."

The main contention of the learned counsel for the appellant is that this provision contained in Rule 46 of Order 21, C. P. C. should be interpreted as indicating what jurisdiction the Court exercises in attaching a debt and since for the attachment of a debt the Court is required to issue a written order prohibiting the debtor from making payment thereof, such an order can only be issued by a Court within whose jurisdiction the debtor happens to be and that issue of such an order by the Court to a debtor who is outside the jurisdiction of that Court amounts to issuing an order outside its jurisdiction and thus exercising jurisdiction not vested in the Court.

In our opinion, Rule 46 of Order 21, C. P. C. does not define the jurisdiction of an execution Court, nor does it lay down the act the doing of which amounts to exercise of jurisdiction by an execution Court. The jurisdiction is defined and the act which has to be done to exercise jurisdiction is that laid down in Section 51(b), C. P. C., so that the Court exercises jurisdiction by ordering attachment of the immovable property. Rule 46 of Order 21 of C. P. C. then merely lays down the manner in which that jurisdiction is exercised and the processes that have to be issued for the purposes of exercising that jurisdiction. As long as the property happens to be within the jurisdiction of the Court we are unable to see why it should be held that me Court has no jurisdiction to order its attachment or to proceed to attach it. Section 39, C. P. C. gives an indication of what a Court has to do when the property is not within its jurisdiction. That section mentions that, if the judgment-debtor has no property within the jurisdiction of the executing Court, that Court may transfer the decree to the Court having jurisdiction where the property of the judgment-debtor happens to be located. It does not require transfer of a decree in a case where the property of the judgment-debtor is within the jurisdiction of the executing Court.

In the case of a debt, if the debt is payable within, the jurisdiction of the executing Court, It has to be held that the suits of that debt is within the jurisdiction of the, execution Court and that Court can, therefore, proceed, against that debt by attaching it irrespective of the place of residence of the debtor by whom that debt is payable, to the judgment-debtor.

It is true that in exercising this jurisdiction by attaching the, property which is within its jurisdiction the execution Court will have to send a written order, prohibiting the debtor from making payment thereof, outside its jurisdiction if the debtor happens to be outside the jurisdiction of the. Court. The mere fact that in order to exercise jurisdiction in respect of the property situated within its jurisdiction the Court has to send an order to a person situated, outside its jurisdiction does not, in our opinion, amount to exercise of jurisdiction not vested in it. Even in a case of a regular suit, defendants may be residing outside the jurisdiction of a Court but, if a Court Is properly seized of the suit, because the suit lies before that Court arid the Court issues processes against the defendants who may be residing outside the jurisdiction of the Court, it cannot be contended that the Court proceeds to exercise jurisdiction not vested in it. In such suits the Court may also be called upon to issue summonses to witnesses residing outside its jurisdiction. The mere issue of such processes to be served on persons residing outside its Jurisdiction has never been held to be exercise of Jurisdiction beyond the limits of jurisdiction of that court. These are incidental and procedural steps that have to be taken by a Court while exercising Jurisdiction in respect of a case or matter of which the Court is competently seized.

In, the present case the Court, in our opinion, was competently seized of the proceedings for execution of decree by attachment of the property which had its suits within the jurisdiction of the Court and, if the Court had Jurisdiction to proceed with that attachment, it seems to us that there could be no objection to that Court issuing a process which might have to be served on a person located, outside the jurisdiction of that Court. The service of that process on the debtor is not the exercise of jurisdiction, to execute the decree or to attach the property. That is only one of the intermediary processes which the Court has to go through for the purpose of exercising its jurisdiction of attaching the property in execution of the decree, and as we have indicated earlier, issue of such a process for service even outside the jurisdiction of the Court is envisaged in other cases also where the Court is competently seized of the appropriate proceeding in respect of which the. process has to be issued.

6. In this connection learned counsel relied before us on a Full Bench decision of this Court in Parbati Charan v. Panchanand ILR All 243. It is to be noticed that, in that case, execution was sought by attachment of the salary of a public officer and it was held that the execution Court had no power to make the attachment because the salary was to be disbursed outside its local jurisdiction. That was, therefore, a case where not only the disbursing officer, who may be treated as a debtor, was outside the local limits of the jurisdiction but even the entire salary was payable outside the jurisdiction of the Court, so that the salary which was to be thi subject-matter of attachment could not be held to have

its suits within the jurisdiction of the executing court. Similar was the case of Abdul Gafur v. W. J. Albyn ILR Cal 713. That case also proceeded on the basis that the salary sought to be attached was disbursed by the officer situated outside the jurisdiction of the execution court and the disbursement was also to take place outside the jurisdiction of that Court. This is clear from the following quotation from that judgment:

"But if the attachment is of salary that has not actually fallen due, and is made in the manner indicated in Section 268, C. P. C. by a prohibitory order requiring the officer whose duty it is to disburse the salary, to withhold every month such portion as the Court may direct until the further orders of the Court, the attachment in such a case is attachment of a debt not of course actually due to the judgment-debtor, but anticipated to fall due to him, month by month, at the place where the disbursing officer has his office, and such an attachment can be made only by the Court having jurisdiction at the place where the disbursing officer has his office."

7. This quotation clearly shows that the learned Judges in applying the law proceeded on the basis that in that case not only did the disbursing officer have his office outside the jurisdiction of the execution Court but even the salary was payable at the place where the disbursing Officer had his office, so that it was not possible to hold that, even if the salary had fallen due and had become payable, it had been converted into a debt having it as suits within the jurisdiction of the execution Court. Reliance was also placed by the learned counsel on the decision of Bombay High Court in the case of Sayadkhan v. Davies ILR 28 Bom 198. That case, in our opinion, can be of no help at all because in that case the learned Judges delivered a two line judgment merely holding that they had to follow the decision in the case of ILR Cal 713 (supra) and further held that the question referred had on the basis of that case to be answered in the negative. Finally learned counsel relied upon another decision of a Division Bench of the Calcutta High Court in Begg Dunlop and Company v. Jagannath Marwari ILR Cal 104. That again was a case in which the Calcutta High Court first came to a clear finding that the suits of the debt was not within the jurisdiction of the execution Court and it was in view of this finding that Justice Mookerjee, who delivered the leading judgment, held:

"I am suitable to hold, on principle, that it is competent to a Court to issue such a prohibitory order upon a person, resident outside the local limits of its jurisdiction, in respect of property also beyond such local limits."

8. It is to be noticed that the learned Judge emphasised the fact that the prohibitory order could not be issued to a non-resident person provided it was in respect of property also beyond the local limits of the jurisdiction of the Court issuing the order. In the case before us, the facts are quite different. Here there is a clear finding that the property, which is the subject-matter of the order of attachment, was a debt payable at Agra within the jurisdiction of the execution Court and consequently the principle laid down. In that case would not be applicable. Learned counsel for the appellant, however, urged before us that at least the reasoning adopted in the Calcutta case would show that his submission is

correct; and that, even in cases where the suits of a debt may be within the jurisdiction of the execution Court, it should be held that the Jurisdiction of the execution Court to proceed against that debt is barred by the circumstance that the debtor is not within the jurisdiction of that Court. It is true that some of the comments in that judgment, if read in the general form, would appear to support this proposition, but we must not forget that, the remarks which the learned Judge made in that judgment were based on the principle enunciated by him which has been mentioned above and must be interpreted on the basis that they were made in that context.

The learned Judge first took notice of the objection that if a precept issued by a Court to a person outside its jurisdiction is disobeyed and payment is made in defiance thereof the Court would be powerless to enforce its order in proceedings for contempt, but we are not aware of the exact law of contempt applicable at the time of this decision. The present law of contempt it appears to us, is not such as would make such an argument of any value. There are certain orders which Civil Courts are authorised to issue under the CPC in respect of which, if there is a disobedience, the power is conferred on that Court to take action against the person committing breach of that order. As an example, there is the provision in Order 16, C. P. C. where a Court is empowered to take proceedings against a witness for not complying with the summons issued for attendance. Then there is the provision In Order 39, C. P. C. for action being taken against a person disobeying an injunction issued by a Court under that provision.

It is, however, to be noticed that Order 21 contains no provision for action being taken by the executing Court against either a judgment-debtor or his debtor. The disobedience of such an order may amount to a contempt of Court but it is clear that it is not contemplated by the CPC that the Civil Court would itself have the power to punish or otherwise penalise the person committing a breach of that order. In such circumstances, the only resort open to the Court would be to report to the High Court for proceedings being taken against the person committing a breach of the order in accordance with the Contempt of Courts Act If a Court has to make such a report to the High Court it seems to us that it would be immaterial whether the person against whom proceedings are to be taken happens to be residing within or without the jurisdiction of the Court. Even if he happens to be residing outside the jurisdiction of the reporting Court, the High Court can certainly take action against him. The proceedings which would be open to the execution Court for defiance of a prohibitory order issued under Order 21, Rule 46, C. P. C. will, therefore, be identical in nature whether the person to be proceeded against is within the limits of its local jurisdiction or outside those limits.

9. The next point that has to be considered is whether we should accept the interpretation that an execution court should not be held to be empowered to issue an order under Order XXI Rule 46 C. P. C. to a person outside the limits of its local Jurisdiction on the ground that there is no good reason why the decree-holder should not apply for transfer of the decree to the Court within the local limits of which the garnishee, that is, the debtor of the judgment debtor resides. The Calcutta High Court in dealing with this point

envisaged two objections and held that neither of those two objections could be considered to be cogent ones against the adoption of such a course. The first point that was urged before the Calcutta High Court was that there would be delay in moving for transfer of the decree and this might prove fatal to the decree-holder who might find that the judgment-debtor had, in. collusion with his debtor, received payment of the debt sought to be attached. This objection was answered on the ground that the procedure of attachment under precepts provided in Section 46, C. P. C. furnished a speedy and effective remedy and was sufficient to meet such a contingency. This view appears to us to have great force. There was, however, a second objection to the effect that, if it be held that it would be necessary to have the decree transferred to the Court having jurisdiction where the debtor of the judgment-debtor resides, two separate orders would be required in respect of the same matter, that is an order by the Court which passed the decree upon the judgment-debtor prohibiting him from recovering the debt and an order by the Court to which the decree has been transferred for execution upon the debtor of the judgment-debtor prohibiting him from making payment thereof. This was also the reasoning that had found favour with the learned Judges who decided the case; In re, Hollic 2 Beng LR AC 108 :10 Suth W 447.

The learned Judge of the Calcutta High Court on this aspect expressed his opinion by saying that he did not feel pressed by the weight of this contention because the course suggested did not lead to any serious inconvenience. It appears to us that, before the learned Judge In that case, the view point, that was put forward related to the inconvenience likely to be caused in having to move the Court which passed the decree as well as the Court Within whose jurisdiction the debtor of the judgment-debtor may be present, but the anomaly of the nature of the proceedings that have to be taken does not appear to have been brought to the notice of the learned Judge. !n this connection, it is necessary to take notice of the Various proceedings which will have to be taken or orders which will have to be taken or orders which will have to be passed by each Court in such a case. If the judgment-debtor is residing within the jurisdiction of an execution Court and his debtor in the jurisdiction of another Court and it is held that it would be necessary to apply to the Court within whose jurisdiction the debtor of the judgment-debtor is residing, the proceedings that would have to be taken would be as indicated hereafter. There will first have to be art application for execution of the decree by attachment of the debt due to the judgment-debtor from his debtor, presented in the executing Court in whose jurisdiction the judgment-debtor is residing. Then, even though the property be situated within the jurisdiction of that Court, there will have to be a second application before that very execution Court to transfer the decree to the Court having jurisdiction over the place where the debtor of the Judgment debtor may be residing. That Court will then transfer the decree and another execution application would then have to be presented in the transferee Court.

There would then be simultaneously pending two applications for execution of the decree, one in the execution Court which passed the decree and the other in the transferee Court.

Both execution applications will be in respect of the same decree and in both the prayer for execution will be by attachment of the same property, viz. the debt due to the judgment-debtor from his debtor. It is only if these proceedings are taken that one order would be made by the Court, which passed the decree, prohibiting the Judgment-debtor from recovering the debt as the judgment-debtor would be within the Jurisdiction of that Court and then there would be another prohibitory order issued by the transferee Court directing the debtor of the Judgment debtor not to make payment of the debt due to the Judgment-debtor. Order 21, Rule 46, C. P. C. envisages only one attachment by Issue of two orders. On the interpretation sought to be put on behalf of the appellant, there would have to be two execute on applications with two orders of execution of the decree by attachment and each court will only take proceedings to the extent of carrying out half the number of processes needed to make the attachment.

In the present case, if this argument were accepted, the Court at Agra would be entitled to issue a prohibitory order against Sardar Singh alone. The Court to whom the decree would have to be transferred would be the Court at Meerut where the appellant company had its headquarters and that Court would be entitled to issue a prohibitory order against the appellant company alone directing it not to make payment to the judgment-debtor but would not be entitled to issue a direction to the judgment-debtor not to recover the money as he would be outside the jurisdiction of the Meerut Court. Thus an anomalous position would arise that there would be two execution applications for execution of the same decree against the same property in the same manner and each of the two executing Courts will only carry out part of the processes required for making the attachment, neither of them completing the attachment by itself. Clearly, such a position could not have been envisaged by the Code of Civil Procedure. Then again, it would be difficult to decide where objections in such a case would be filed if they arise u/s 47, C. P. C. Will they be filed in the Court at Agra or in the Court at Meerut or will it be open to the parties to file such objections in either of the two Courts and to seek simultaneous decisions from both of them. It seems to us that the Legislature could never have contemplated such a position arising under Order 21, Rule 46, C. P. C. This all the more confirms our view that Rule 45 of Order 21 of the CPC should only be read as laying down the process that has to be issued for the purpose of making the attachment and no bar exists in respect of service of such process outside the jurisdiction of the Court issuing the processes, provided the order for issuing the processes is made by the Court having jurisdiction to do so.

It is only after proceedings for attachment under Order 21, Rule 46, C. P. C. have been taken that the further garnishes proceedings under Rules 131 to 140 of Order 21, C. P. C. introduced by this Court can be resorted to. It is under these latter rules that garnishee proceedings are actually taken and garnishee orders are made. Rule 131 introduced by this Court in Order 21, C. P. C. mentions that the power for calling upon the garnishee to appear before the Court and to show cause why he should not pay or deliver in the Court the debt due from him is to be exercised after there has been an attachment under Rule

46 of Order 21, C. P. C, This order for garnishee proceedings is thus in pursuance of the order of attachment and the power to order and to make the attachment having once vested in the Court at Agra that Court would be further competent to continue the proceedings and issue directions under Rule 131 of Order 21, C. P. C, Thus it seems to us that the learned single Judge was quite right in coming to the conclusion in the present case that the Court at Agra had jurisdiction to take these garnishee proceedings.

10. The second point of law urged by the learned counsel which has been mentioned by us above, is based on the circumstance that the respondent decree-holder Suraj Bhan in this case had come forward with the plea that the hire of the bus, which was payable by the appellant company to Sardar Singh, the judgment-debtor, was due under a contract which had been reduced into writing and yet the Courts permitted the terms of that contract to be proved by oral evidence which was consequently inadmissible. It appears in this case from the judgment of the execution Court that the written agreement which was being relied upon by the decree-holder was in possession of the appellant company and was withheld. The execution Court recorded its findings in the following words:

"On the other hand, 1 believe Bishan Dat and Baijnath and hold that the parties entered into a written agreement at Agra. That agreement and the receipts of payment having been withheld raises a presumption that their contents are against the objector."

11. This finding recorded by the execution Court contains within it the decision that the agreement had been withheld by the objector who was the appellant company. It appears that, on this question of fact whether the agreement had of had not been withheld by the appellant company, the finding recorded by the execution Court was not challenged before the first appellate Court in the grounds of appeal; and, at the time of the decision of the appeal also, that Court had no occasion to go into this question. The first appellate Court dealt with each ground taken in the memorandum of appeal seriatim and there being no ground on this point that Court remained silent on this question and proceeded on the basis that the finding which had been recorded by the execution Court was correct and was not being challenged. It is further to be noticed that the appellant company was in fact denying the existence of the written agreement altogether and that dental itself meant that, if that agreement was in possession of the appellant company, the company was not prepared to produce it before the Court. An agreement of hire of the bus must be presumed to have been executed in accordance with the Contract Act and one of the copies of the hire agreement must be in possession of the appellant company. The presumption of law was in favour of the view that the appellant company was in possession of the agreement. That is a reasoning which is in support of the finding implied in the decision of the execution Court that the agreement was being withheld by the appellant company. The agreement having been withheld, secondary evidence to prove the contents of the agreement could be given in view of Clause (ii) of the proviso to Section 66 of the Indian Evidence Act read with Section 65(a) of that Act. The agreement appeared to be in possession and power of the appellant company.

The appellant company from the nature of the case knew that the company would be required to produce it. No notice of production need, therefore, have been served on the appellant company and the contents of that agreement could be proved by oral evidence. Whether the oral evidence has been rightly or wrongly relied upon and whether the finding recorded on the basis of that evidence is correct or not are questions of fact on which the decision of the first appellate Court was final. It is, therefore, not at all necessary for us to see as to how tar the finding recorded was correct We may, however, take notice of another point which in this connection was urged by learned counsel for the appellant company and that was that the appellant company, having denied the liability to the debt under Rule 133 of Order 21, C. P. C, as framed by this Court, the burden should have been placed entirely on the decree-holder respondent not only to prove the agreement but also to prove all other ingredients necessary for the purpose of holding that the amount which the appellant company had been directed to deposit, was really due. We are unable to accept this contention. When the appellant company disputed the liability, it was for the appellant company to indicate on what grounds that dispute was being raised, so that specific issues could be framed with respect to the questions which were necessary for determining the liability. The appellant company, it appears, from the judgment of the learned single Judge and the judgments of the lower Courts, had proceeded on the acceptance of the decree-holder''s case that the bus had been hired to the appellant company, that the bus belonged to Sardar Singh and Babu Singh in equal share and that the company had to pay the hire at a rate of Rs. 8/- per diem.

The learned counsel wanted to urge that it was for the decree-holder respondent to further prove that the hire was payable for every day whether the bus was or was not used on that day and further that the arrears had not been paid. The appellant company nowhere pleaded that the hire was payable only for the days when the bus was used and while there was no such plea the general contract proved on behalf of the decree-holder that the appellant company was liable to pay hire at the rate of Rs. 8/- par diem was sufficient, so far as the duty lay on the decree-holder, to discharge the burden of proof on facts he was required to prove. Similarly if the appellant company urged that any amount had actually been paid and was not due it was for the appellant company to take that plea and prove it by evidence. The appellant company having adopted no such course we are unable to hold that the lower Courts committed any error in this respect.

12. The appeal has no force and is dismissed with costs.