
(2004) 11 AHC CK 0250

Allahabad High Court (Lucknow Bench)

Case No: Civil Revision No"s. 123 and 136 of 2004

Chief Treasury Officer

APPELLANT

Vs

Pradeep Pharma and
Others

RESPONDENT

Date of Decision: Nov. 24, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 30, Order 21 Rule 36, Order 21 Rule 46, Order 21 Rule 46(1), Order 21 Rule 46I
- Constitution of India, 1950 - Article 150, 184, 185, 186, 202
- Reserve Bank of India Act, 1934 - Section 21

Citation: (2005) 2 AWC 1616

Hon'ble Judges: Khem Karan, J

Bench: Single Bench

Advocate: A.P. Singh Gaur, for the Appellant; S.C. Pandey, for the Respondent

Final Decision: Allowed

Judgement

Khem Karan, J.

In both the abovementioned civil revisions filed u/s 115 of the CPC (hereinafter referred to as the Code), a common question is involved and the question is as to whether a Chief Treasury Officer is a garnishee, (as referred to in Rules 46A to 46G of Order XXI of the Code), qua the sums allocated to an Administrative department of the Secretariat or to the Heads of departments or to Head of the offices etc., in a relevant Head or Sub-Head of the Account. Therefore, these revisions are being disposed of by this common judgment and order. The relevant facts giving rise to these revisions are as under :

2. The opposite party No. 1, M/s Pradeep Pharma, filed two civil suits No. 87 of 1999 and 88 of 1999, against opposite parties No. 2 to 5 in the Court of Civil Judge (Senior Division), Etawah and succeeded in obtaining decrees on 26.10.1999, for recovery of money. While the decree passed in Suit No. 87 of 1999 was for recovery of Rs.

14,51,525, the decree passed in the other suit was for recovery of Rs. 4,09,500, together with interest @ 6% per annum. The decree-holder got these decrees transferred for execution, to the Court of Civil Judge (Senior Division), Mohanlal ganj, Lucknow. Two execution cases being No. 21 of 2000 and 22 of 2000 were registered in the transferee court. On 14.5.2001, the executing court attached the amounts so allocated to the Director Ayurvedic and Unani Services U. P., through Grant No. 33 in Major Head Account 2210 (Medical and Health Services Non-Plan), by prohibiting the Chief Treasury Officer, Lucknow from making payment to opposite party No. 3. The Chief Treasury Officer, Lucknow wrote back on 29.5.2001, informing the Court that the total amount in all the heads of Accounts of the opposite party No. 3, was 13,72,824 only and the same would remain attached as directed by the Court. It appears that the State of U.P. filed objections u/s 47 of the Code saying that the decree was void in view of certain orders passed by this Court in a writ petition, relating to "Ayurvedic Scam", but the executing court was not convinced and it rejected the same vide order dated 25.1.2003. The court issued notice purporting to be under Rule 46A of Order XXI of the Code, to the revisionist directing him to make the attached amount available to the Court. The revisionist showed his inability in absence of presentation of proper bill, signed by drawing and disbursing officer for withdrawing the amounts from the said account. While all this was going on, the decree-holder filed a Writ Petition No. 4973 of 2003, which this Court disposed of vide order dated 29.9.2003, directing the executing court to expedite the disposal of execution cases. This AWC 102 court did not go into the merits of the case. Thereafter the decree-holder moved applications, purporting to be u/s 58, Rules 30 and 46B of Order XXI of the Code, for proceeding against the revisionist as if he was a garnishee. The revisionist filed objection, saying that after the withdrawals of amounts of the salary of the staff for the months of February, March and April, pursuant to the orders dated 28.3.2003 and 29.3.2003 of the Court there was no balance in the account and moreover whatever was, it stood lapsed on closure of financial year on 31.3.2003. It was also said that he was not a" garnishee. The decree-holder filed another Writ Petition No. 1056 of 2004, which this Court disposed of vide order dated 25.3.2004. Relevant portion of this order dated 25.3.2004 is reproduced in para 15 of the counter-affidavit. A third writ petition (W.P. No. 3646 of 2004) was also disposed of vide order dated 24.8.2004, without entering into the merits.

3. Vide order dated 20.9.2004 passed in execution case No. 22 of 2000, and order dated 12.10.2004 passed in execution case No. 21 of 2004, the Court allowed the applications of decree-holder, u/s 58 read with Rules 36 and 46B of Order XXI of the Code. A perusal of order dated 20.9.2004 (impugned in Civil Revision No. 123 of 2004) reveals that the Court decided to proceed against the revisionist as if he was a garnishee, so it asked him either to pay the attached amount else be ready to be arrested and detained in civil prison, till the attached amount was paid in the Court or to the decree-holder. A perusal of order dated 12.10.2004, (passed in execution case No. 21 of 2000) against which Revision No. 136 of 2004 has been filed, would reveal that the executing court adjudged the revisionist as garnishee, qua the attachment dated 14.5.2001 and so directed

issuance of warrant of arrest for putting him in civil prison till the payment was made, as according to it amount was recoverable under Rule 46B of Order XXI of C.P.C. There is no point in referring to various other orders, passed by the executing court prior to the orders, impugned in these revisions.

4. The two decrees have been challenged by filing first appeals before this Court at Allahabad and the same are pending.

5. It also transpires that the executing court sent a Bill, to the revisionist, for drawing the amounts from the said head, presumably on the basis of a decision of this Court in Washim Ahmad and Ors. v. Treasury Officer, Allahabad 2002 (5) AWC 4347, but due to certain objections being raised by the treasury, the same could not be passed. The said decision will be discussed at appropriate stage.

6. The Court has heard Sri S. S. Chauhan the learned Additional Advocate General assisted by Sri A. P. Gaur, for the revisionist and Sri S.C. Pandey, the learned counsel for the decree-holder opposite party No. 1. Copies of all the relevant orders, were already annexed to the pleadings of the parties, so necessity of summoning and perusing the lower court record, was not felt either by the parties counsel or by the Court.

7. Sri Pandey has raised an objection as to the maintainability of these two civil revisions on the ground that the orders so impugned in these revisions, are appealable under Rule 46H of Order XXI of the Code. Sri Chauhan has tried to meet it by arguing, if the status of the revisionist, qua the amount so attached is not that of garnishee, as stated in the grounds of revision, appeal will not lie under Rule 46H and the revisions will be maintainable. He argues that decision on this preliminary objection of Sri Pandey, depends on the answer to the question whether the revisionist is a garnishee? The Court finds sufficient force in this submission of Sri Chauhan. So, let us see whether the position of the revisionist, qua the attachment dated 14.5.2001, was that of a garnishee, in the sense the expression is so used in Rules 46A to 46G of Order XXI of the Code.

8. It may be clarified in the very outset that this Court is not required to decide whether or not, sums allocated to a department of a Government, in a relevant Head of the Accounts, whether major or minor, can be attached in execution of a money decree, against such Government or the department concerned.

9. Before we proceed to examine the point in issue, it would be fair first to deal with an argument of Sri Pandey, that the question whether the revisionist is a garnishee or not, is now not open after the order dated 25.3.2004 (C.A. 22 in Civil Revision No. 123 of 2004) of this Court in Writ Petition No. 1056 (M/B) of 2004. The relevant portion of this order, as quoted in para 15 of the counter-affidavit of decree-holder is as under :

"From the perusal of the order dated December 3, 2003 passed by the executing court, it is evident that the said Court has already issued a garnishee order. If the said order is not executed, the petitioner can pray for consequential relief from the executing court..... The

petitioner can approach the said court for further appropriate action in case garnishee order is not carried out. However, the executing court is directed to dispose of the execution case filed by the petitioner as early as possible, not exceeding three months from the date a copy of this order is produced before it." "(Actually this is an order dated 11.11.2003 and was fixed for 3.12.2003)."

10. One can easily say, after going through this order that this Court did not examine the question, whether the Chief Treasury Officer, Lucknow was a garnishee, qua the attachment dated 14.5.2001. It just observed, after referring to order dated 3.12.2003 of the executing court that the said Court has already issued a garnishee order and if the said order is not executed the petitioner can pray for consequential relief from the executing court. Shri S. S. Chauhan appears to be right in saying that the Division Bench did not go into the question, posed now before this Court, So, this Court has to examine the said point here in these two revisions.

11. Before we refer to the relevant provisions under the Code, a brief reference to the provisions, relating to the budgetary provisions, allocation of sums in different heads of account, the manner of withdrawal of sums so allocated in a relevant head of account, the powers and duties of Treasury Officer or Chief Treasury Officer, may be made with a view to correctly understand the legal status of Chief Treasury Officer/Treasury Officer, qua the sums so allocated or sanctioned in a particular major or minor head of the Accounts of an Administrative Department of Secretariat or Head of the Department or Heads of the Officers etc.

12. Article 150 of the Constitution of India, says that the accounts of the Union and of the State shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe. Our polity being federal major to minor head of account and its codes are common to Government of India, all States and Union Territories. All receipts and disbursements of the State Government are shown in three separate parts, namely (1) Consolidation Fund (2) Contingency Fund and (3) Public Account. Clause (3) of Article 266 mandates that no money out of the Consolidation Fund can be appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution. By enacting Uttar Pradesh Contingency Fund Act, 1950, this State has established Contingency Fund referred to in Article 267 of the Constitution of India, to enable the executive Government to meet unforeseen expenditure, pending its authorization by the Legislature by law. Receipts and disbursements such as deposits, reserve funds, remittances etc. which do not form part of the "Consolidation Fund" are included in the "Public Account of the State."

13. According to Clause (1) of Article 202 of the Constitution of India an "Annual Financial Statement" (or a "budget") for every financial year has to be laid before the House or Houses of the Legislature of the State, showing the estimated receipts and expenditures of the State for that year. Clause (2) says that estimates of expenditures embodied in the annual financial statement" shall show separately the sums required to meet

expenditures described by this Constitution as expenditure charged upon the consolidated fund of the State and the sums required to meet other expenditure proposed to be made from the consolidated fund of the State. Clause (3) of the said Article enumerates the expenditure that are charged on the consolidated fund of the State and the sums include any sum required to satisfy and adjust decree or award of any Court or arbitral Tribunal. Articles 184-186 provide as to how an annual financial statement has to be prepared.

14. After this annual financial statement is cleared by the Legislature of the State under Article 203 of the Constitution of India, a bill to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants so made by the Assembly and the expenditure charged on the consolidated fund of the State has to be introduced in the Legislature of the State so as to authorize expenditure of the budgeted amount. After the appropriation bill is cleared in the manner provided in the Constitution of India, Finance Department is to inform various administrative departments of the Government in the Secretariat, and the Accountant General of the State about the budgetary provisions and the appropriation so made. In turn, sanctions are issued by the respective administrative departments of the Secretariat to their respective heads of the department, head of the offices etc. under intimation to the finance department. The heads of the department distribute the sanctioned amount, amongst their district level or regional level heads of the offices under intimation to the respective administrative departments and the respective treasury offices. All this has to be done subject to the limits provided in the cleared financial statement and the appropriation. The provisions of sums are made as per the coding pattern of major to minor heads of the accounts.

15. Every controlling officer is expected to see not only that the expenditure is kept within the total grant or appropriation placed at his disposal but also to see that expenditure under each standard object is kept within the amount originally provided under that standard object. Transfer of funds from one standard object to another may not be permissible without approval of the Finance Department of the Government.

16. Under Treasury Rule 3 of the Rules so framed by the Governor of the State under Clause (2) of Article 283 of the Constitution of India (See Appendix II to Financial Handbook Vol. V Part I), all moneys standing in the Government account must either be held in the Treasury or in the Bank. Moneys deposited in the bank shall be considered one financial fund in the books of the Bank on behalf of the State and such deposit in the bank shall be governed by the terms of the agreement made between the Governor and the Bank u/s 21 of Reserve Bank of India Act, 1934. (Annexure-A to Appendix II to Financial Hand Book Vol. V Part I contains the agreement). According to it, the general banking business of the State including the payment, receipts, collection, remittance of money on behalf of the Government shall be carried on and transacted by the Bank in accordance with such orders and directions as may from time to time be given to the Bank by the Government in that behalf or by the officers authorized by the Government.

17. Rule 13 of the Treasury Rules provides, unless the Government in the finance department after consultation with the Accountant General, otherwise directs in any case moneys may not be withdrawn from the Government account without a written permission of the Treasury Officer or of an officer of the Indian Audit Department authorized in this behalf by the Accountant General. Rule 15 of the said Rules enumerates the purpose for which the Treasury Officer may permit withdrawal of money from the Government account. Sub-rule (2) of Rule 15 of the said Treasury Rules mandates unless expressly authorized by the Accountant General, a treasury officer shall not permit withdrawal for any purpose not specified in Clause (1) of this Rule. Rule 17 declares that a treasury officer has no general authority to make payments on demand presented at the treasury as his authority being strictly limited to the making of payments authorised by or under these rules. It goes on to say that if a demand of any amount is presented at a treasury for payment which is not authorised by or under these rules, or is not covered by a special order received from the Accountant General, the Treasury Officer shall decline payment for want of authority. Rule 27 authorises the Collector to order in writing in cases of urgency, authorising and requiring of a Treasury Officer to make payment not being a payment of pension, without complying with the provisions of the Treasury Rules. But this deviation will promptly be reported to the Accountant General.

18. The Treasury Manual of Uttar Pradesh provides as to in what manner a bill is to be presented to the treasury officer by the drawing and disbursing officer, for withdrawing the amount from a particular Government account or head of the account. There is no need for referring to this procedure in detail. This much is also clear from the Treasury Rule 4 (2) that treasury shall be under the general charge of the Collector, who may entrust executive control to a treasury officer subordinate to him.

19. The above provisions make it clear that sums so allocated in a particular head or sub-head of account of a department concerned, has to be withdrawn by the drawing and disbursing officer by preparing a bill in accordance with the rules and by presenting the same to the treasury concerned for clearance. The responsibility of the treasury officer is to ensure that the bill is properly drawn and signed by the officer so authorised and the money being drawn is available in the major or minor head of the department or head of the office concerned. The treasury officer has no authority to withdraw the amount of his own from a particular head of the account of the department or head of the office as the case may be, without there being proper presentation of the bill by the drawing and disbursing officer concerned,

20. Sri S. S. Chauhan has informed the Court that the prevalent practice is that after the bill is cleared by the treasury officer or Chief Treasury Officer, cheque is handed over to the payee drawn on a bank concerned and it is the Bank which makes the payment.

21. Sri Pandey has referred to definition of the expression "garnishee" as given in some dictionaries and has tried to say that any person directed by the Court to make the payment to the decree-holder or to the Court for being paid to decree-holder (sic) for

purposes of Rules 46A to 46H of Order XXI of the Code. He has also tried to say that the position of the Treasury Officer or the Chief Treasury Officer is that of a "debtor" to the judgment-debtor" and so he happens to be the garnishee. It would be useful to reproduce Rules 46 to 46-I of Order XXI of the Code ;

"46, Attachment of debt, share and other property not in possession of judgment debtor.--(1) In the case of :

(a) a debt not secured by a negotiable instrument.

(b) a share in the capital of a corporation.

(c) other movable property not in the possession of the judgment-debtor except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting :

(i) 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;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the Court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property except as aforesaid, to the person in possession of the same.

(3) A debtor prohibited under Clause (1) of Sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

46A. Notice to garnishee.--(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under Rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(2) An application under Sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that, In the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(3) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

46B. Order against garnishee. --Where the garnishee does not forthwith pay into court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

46C. Trial of disputed questions. --Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under Rule 46A is made in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that court.

46D. Procedure where debt belongs to third person.--Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, , to such debt and prove the same.

46E. Order as regards third person.--After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

46F. Payment by garnishee to be valid discharge.--Payment made by the garnishee on notice under Rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under Rule 46A was made, or the order passed in the proceedings on such application, may be set aside or reversed.

46G. Costs.--The costs of any application made under Rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

46H. Appeals.--An order made under Rule 46B, Rule

46C or Rule 46E shall be appealable as a decree.

46-I. Application to negotiable instruments.--The provisions of Rules 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under Rule 51 as they apply in relation to debts.

22. Reference to the expression garnishee" is made in Rules 46A to 46G of Order XXI of the Code and a plain reading of Rule 46A would make it clear that these will be attracted only if the attachment effected under Rule 46 of Order XXI relates to a debt. In other words, if the attachment under Rule 46 does not relate to a debt payable by someone to the judgment-debtor. Rules 46A to 46G would also not be attracted.

23. Before the Court proceeds to see whether the amount in the head of the account of the judgment-debtor is a kind of debt payable by the Chief Treasury Officer to the judgment-debtor, we would like to refer to Circular Letter No. 1186 dated 2nd January. 1915, issued by this Court for the guidance of the sub-ordinate courts. It reads as under :

"The rule governing the attachment of money held in deposit in Government treasuries under the order of a Court or departmental officers relates to property in the custody of a Court or public officer (Rule 52, Order XXI of the Code of Civil Procedure), the treasury officer is. qua the deposit, merely an agent of the depositing court or officer, and. therefore, the deposit held by the treasury officer is in the custody" of the Court or officer by whose order it was made. District Judges should, therefore, ensure that civil courts do not issue warrant of attachment to treasury officers, but to the Court or public officers, by whose orders the money is held in deposit by the treasury officers." (the above circular letter is given on page 418 of the book titled as "Circular Letters of the High Court of Judicature at Allahabad" in its revised edition of 1990, published by J.T.R.I.). If a treasury officer, qua a cash deposit in the treasury, is merely an agent of the Court or public officer, by which such deposit was made, and if in that context, the treasury officer is treated simply an agent of the Court or public officer, we fail to understand as to how the same treasury officer can be held to be a debtor, qua budgetary provisions in a particular head of the account of a department or head of the offices. Such an amount in that head is not even in the treasury, but is in the bank and it has to be received by the Drawing and Disbursing Officer from the bank on presentation of a cheque to be issued by the treasury officer.

24. Relying on Haridas Acharjia Chowdhry v. Baroda Kishore Chowdhry ILR ARC 27 Cal 38 and Dunlop and Ranken v. Hendall (1957) 3 All ER 344 , a Division Bench of Andhra Pradesh High Court observed in [Hyderabad Co-operative Commercial Corporation Ltd. Vs. Syed Mohiuddin Khardri and Others](#) , that the amount payable to the judgment-debtor, but in the account of a public officer was not a debt unless the same was actually withdrawn from the account.

25. A close reading of Rule 46 (1) (c) (iii) of Order XXI would show that it is doubtful whether allocation in a particular head of the account of head of the department or head of the offices can be treated to be moveable property so as to be attached under Rule 46. At most, Rule 52 of the said order could be invoked in such a case.

26. This Court has not been able to convince itself to accept the argument of Sri Pandey that sums allocated in a particular head of the account and a particular grant, can be said to be a debt payable by the Treasury or Chief Treasury Officer to the Drawing and Disbursing Officer. So long as this amount remains in the Government account and does not pass to the officer or payee, it retains a character of Government money. The Treasury Officer or the Chief Treasury Officer is the servant of the Government. It is difficult to accept the proposition that Treasury Officer or the Chief Treasury Officer owe any debt to the judgment-debtor, i.e., the Director, Government of U. P. If the Treasury Officer did not owe any debt to them or if the amount in question so attached vide order dated 14.5.2001 was not in the hands of the revisionist or if the revisionist had no authority to withdraw the same without there being presentation of a proper bill from the authority concerned, his position qua that amount was not that of garnishee. A garnishee has to be a debtor first to the Judgment-debtor. If he is not a debtor to the judgment-debtor, he will not be the garnishee within the meaning of Rules 46A to 46G of Order XXI of the Code.

27. Sri Satish Chandra Pandey placed great reliance on a single Judge decision of this Court in Waseem Ahmad and Ors. v. Ram Swaroop Gupta. Chief Treasury Officer, Allahabad 2002 (5) AWC 4347, so as to support his argument that the Chief Treasury Officer is a debtor and in that way a garnishee qua the amount so attached. In that case salary account of CMO, Allahabad was attached in that execution decree. The executing court directed the Chief Treasury Officer to draw and make the payment of the attached amount to the decree-holder. When that decree was not complied with, a contempt petition was filed.

28. It transpires that the contention of the Chief Treasury Officer was that he was simply a custodian of the funds allocated by the State Government to the particular account of the DDO to be drawn and disbursed in accordance with the business rules, hence he found himself unable to comply with the orders of the executing court. It was in these circumstances, that this Court ruled that the Court directing attachment steps into the shoes of Drawing and Disbursing Officer and it is the Court which becomes competent to present a bill at the Treasury to withdraw the attached amount from the head of the account concerned. It appears, in the light of this judicial pronouncement that the executing court had presented the bill, which the revisionist could not clear for want of certain formalities.

29. This much is clear from the above Judicial pronouncement that his Lordship was not dealing with the question whether Chief Treasury Officer was a garnishee qua the budgetary allocation in a particular head of the account. There is no need for entering into

the question as to whether the order of attachment would supersede the financial rules or the executing court could step into the shoes of Drawing and Disbursing Officer. This much is sufficient that the question involved here was not under consideration before his Lordship.

30. After the conclusion that the position of the revisionist is not that of garnishee and he cannot be proceeded under Rule 46B, there is no need for referring to the provisions relating to the arrest and detention of the judgment-debtor in execution of money decrees, but since the executing court is entertaining a wrong notion that the judgment-debtor can be detained for a period till the payment is made, so it becomes necessary to draw his attention towards the provision contained u/s 51(c) and 58 of the Code. Even the judgment-debtor cannot be put in prison for a period exceeding three months as is the mandate of Section 58(1) of the Code. The position of the garnishee will not be inferior to that of the Judgment-debtor. So by no analogy, a garnishee can be put in civil prison under Rule 56B for a period exceeding three months. The order dated 12.10.2004 of the executing court says that the revisionist is to be detained in civil prison for a period till the payment is not made. The Court ought to have gone through the relevant provisions before passing such orders.

31. There is no dispute that the executing court itself permitted the Director to withdraw the amount from the said head for payment of salary to the staff, for the months of February, March and April, 2003. It has nowhere been shown that the revisionist permitted any withdrawal of money from the said account in favour of any person without any order of the Court. If in these circumstances, the revisionist expressed his inability in making the amount available to the Court, it is difficult to say that he was unjustified. It was not within his powers to prevent the lapse of the budgetary provisions on the closure of the financial year. It was not within his powers to withdraw any amount on his own without there being a proper bill from the Drawing and Disbursing Officer. Even if the Court had drawn the bill in place of Drawing and Disbursing Officer, the Chief Treasury Officer was well within his jurisdictions to ensure that necessary particulars were provided in the bill. So from no point of view, the Chief Treasury Officer could have been held to be a garnishee so as to be proceeded against under Rules 46A to 46G of Order XXI of the Code. The revisions are maintainable and the two orders passed by the executing court deserve to be quashed.

32. But before parting with this matter. I would like to make some observations. The moment, Chief Treasury Officer received the order of attachment or the moment, opposite party No. 3 received notice or knowledge of this attachment, the matter ought to have been promptly brought to the notice of the administrative department of the Secretariat and Administrative Department should have in turn, made attempts to get the amount allocated, if necessary, from the contingency, for satisfying the decrees. The Government could have taken a prompt decision in accordance with the rules of business so as to make the money available for satisfaction of the decree in question. There is nothing on record to show that the authorities concerned made any attempt to have the allocation

from the Government for satisfying the decree. None of the learned counsel for the parties was in a position to bring to the notice of the Court any express or specific rule in the financial hand-book or elsewhere meeting such contingencies. Failure on the part of the officer concerned has led to this unfortunate situation. Whether the revisionist can be proceeded against for committing contempt of court by disobeying the orders of attachment, has not been examined by this Court in these two revisions. It will be open to the Court concerned to proceed in accordance with law.

33. Accordingly, both the revisions are held to be maintainable as the position of the revisionist was not that of a garnishee and both the revisions are allowed and the impugned orders are quashed. No order as to costs.