

Jorhat Municipal Board and Another Vs Sriprakash Baruah

Court: Gauhati High Court

Date of Decision: Sept. 5, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 21 Rule 21, Order 21 Rule 52, Order 21 Rule 58

Citation: (2007) 4 GLT 831

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Judgement

H.N. Sarma, J.

Challenging the jurisdictional authority of learned Civil Judge (Senior Division), Jorhat, in passing the impugned order dated 2.8.2007, the present revision petition has been filed.

2. I have heard Mr. Y. Doloi, learned Counsel for the petitioner and also Mr. A. Thakur, learned Counsel for the respondent/decree holder.

3. The petitioner/judgment debtor suffered a decree of Rs. 14,53,053.90 passed in Money Suit No. 35/2004 by the learned Civil Judge, Jorhat.

The said money decree having not been satisfied by the Judgment Debtor was put into execution wherein Money Executing Case No. 12/2007

was registered in the file of the learned Civil Judge, Jorhat. On 24.8.2007 when the matter was fixed for order, the petitioner/judgment Debtor filed

an application praying for 3 (three) weeks time for settlement of the matter amicably outside the Court. On the same day another application was

also filed by the Decree holder praying for attachment of the S.B. account of the Judgment Debtor standing with the Central Bank of India, Jorhat

Branch, S. B. Account No. 9269 with a prayer for direction to deposit the decretal amount from the said account in the Court for onward

remittance to the Decree Holder. On the same day, the learned Ext. Court while rejecting the prayer of the Judgment debtor, allowed the prayer

for attachment made by the Decree Holder and attached the aforesaid Bank Account and further directed to pay the decretal amount to the

Decree Holder and report with compliance, fixed the matter on 31.8.2007.

4. It stated at the Bar that the matter was taken on 3.9.2007 on which date, the learned Ext. Court though took note of an information forwarded

by the Director of Town and Country Planning, Jorhat to the effect that the money deposited in S.B. Account No. 9269 belongs to centrally

sponsored object and the amount is jointly operable by the Chairman, Jorhat Municipal Board and the Deputy Director of Director of Town and

Country Planning, Jorhat with request not to transfer any amount from the said S.B. Account without clear instruction from the Government of

Assam, but did not act on the same, rather the learned court directed the Central Bank of India, Jorhat branch to pay the decretal amount to the

Decree Holder and to report compliance.

5. It is to be noted herein, that the objection against the attachment order was also filed by the Judgment Debtor before the Ext. Court, but the

learned Ext. Court was of the view that there is no necessity for the Decree Holder (sic) to file formal objection.

6. Attachment and sale without any attachment of property is also one of the mode of execution of the decree, but such attachment is subject to

certain conditions and as well restrictions as provided by the code. An attachment of the movable property is to be made by actual seizer and the

attaching officer shall keep the property in his own custody. When attachment of such property is required to be made within the custody of the

Court Officer, Order 21 , Rule 52 would be attracted. As per the said provision when the property in the custody of the public officer the

attachment shall be made by notice to such officer, requiring that such property and any interest or dividend becoming payable thereon may be

held subject to further orders of the court from which notice is issued.

7. Order 21, Rule 5 8 prescribes and provides for specific procedure along with machineries to be dealt with in respect of objection to an order of

attachment, by the Ext. Court itself and the decision of the Ext. Court is further liable to scrutiny by way of appeals as it is a decree of a Court.

8. In the instant case the learned Ext. court did not follow the cherished procedures prescribed by the code in dealing with the application for

attachment. It appears that the learned Ext. Court is more influenced by the facts that the money decree has not been satisfied by the Judgment

Debtor and appears to be prompt enough to execute the decree. But the procedure followed by the learned Ext. Court is not permitted under the

present ad judicatory system of law giving a complete go by to the procedure prescribed by the code under Order 21. It is elementary in the

matter of dealing with a prayer for attachment of property that when such objection is raised against the prayer for the attachment, it is to be dealt

with as indicated above, but the learned Ext. Court, for the best reasons known to him, did not entertain the objection filed by the Judgment

Debtor. That apart, the learned Ext. Court is absolutely without any jurisdiction in directing the Bank pay the decretal amount from the account of

the Judgment Debtor to the Decree Holder. The officer may best be directed to attach the property subject to further order to be passed

subsequently regarding disposal thereof, after hearing the objection.

9. The letter written by the Deputy Director of Town and Country Planning, Jorhat dated 1.9.2007 clearly discloses that the aforesaid SBI account

is jointly operable by the Deputy Director, Town and Country Planning, Jorhat and the Chairman of the Jorhat Municipal Board, who is also one

of the Judgment Debtors. This fact itself disclose that the account is a joint account and the money in question does not belong to the Jorhat

Municipal Board alone. Objection so filed by the petitioner clearly states that the money in the said account relates to Central Government's

Scheme viz., the Integrated Development Small Medium Town Scheme (IDSMT). However the truth or otherwise of the said fact is to be found

upon proper adjudication of the objection of Order 21, Rule 58 of the CPC. But the learned executing court did not give due importance to the

said information, decision on which goes to the root of the claim and thus failed to exercise jurisdiction so vested on him by law acting irregularly

and with material irregularity.

10. In view of the above discussion, the impugned order dated 24.8.2007 and subsequent order passed by the learned Ext. Court in the aforesaid

Money Execution case directing the attachment and payment of the amount to the decree holder stands set aside and quashed.

11. The application of the decree holder/respondent would be taken afresh by the learned trial court and it is to be adjudicated in terms of Order

21, Rule 58 CPC taking due consideration of the objection so filed by the Judgment Debtor.

12. With the aforesaid directions this revisions petition stands allowed, to the extent as indicated above.

In view of the aforesaid order subsequent directions in the order dated 3.9.2007 passed by the learned Ext. Court has also rendered inoperative

and redundant.

13. Copy of the order dated 3.9.2007 passed by the learned executing court and copy of the objection filed by the petitioner including the letter

written by the Deputy Director dated 1.9.2007 be kept in record.