

(1985) 04 MP CK 0003

Madhya Pradesh High Court

Case No: Civil Revision No. 212 of 1984

Dharmaveer Moolchand Agarwal

APPELLANT

Vs

Lala Narayandas Agarwal and
others

RESPONDENT

Date of Decision: April 25, 1985

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 46, 115

Citation: (1986) JLJ 328 : (1986) MPLJ 384

Hon'ble Judges: Faizanuddin, J

Bench: Single Bench

Advocate: Nandini Dubey, for the Appellant; P.R. Bhave for Non-applicant No. 1 and R.P. Jain for Non-applicant No. 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Faizanuddin, J.

This Civil Revision u/s 115 of the CPC (hereinafter referred to as the "Code"), has been directed by the judgment-debtor No. 1 against the order dated 3-1-1984 passed by the IIInd Civil Judge, Class II. (sic) in execution case No. 27-A/80.

In a suit between the parties a money decree of Rs. 840/-was passed in favour of non-applicant No. 1 and against the applicant. The decree-holder non-applicant No. 1 proceeded with the execution of that decree for recovery of Rs. 840/-. The decree-holder non-applicant No. 1 applied under Order 21, Rule 46 of the Code, for attachment of arrears of rent due from the two tenants namely Ashiram and Ratanlal, who are occupying certain premises of the applicant and also for a direction prohibiting the tenants of the applicant from making payment of future rents to the judgment-debtor/applicant and to deposit the same in the executing

Court. The tenants filed their replies to the said application stating that they were not in any arrears of rent payable to the applicant. The executing Court allowed the said application by issuing a writ of attachment of rent with a direction to deposit the same in the Court. It is against this order that the judgment-debtor applicant has preferred this revision.

The only point for consideration in this revision is whether future rent payable by the tenant to the judgment-debtor can be attached under Order 21, Rule 46 of the Code. Sub-rule (1) of Rule 46 provides that the attachment shall be made by a written order prohibiting in the case of debt, the creditor from recovering the debt and the debtor from making payment thereof until further orders of the Court. The first question, therefore, arises as to what is a "debt". In its ordinary as well as its legal sense "debt" is the sum of money payable under the existing obligation. It may be solvendum in praesenti that is to say, payable forthwith and in that case the debt is said to be "due" or it may be solvendum future, that is to say, payable at a future date and in that case it would be a debt "accruing". In both cases it is a debt. But a contingent debt which has no present existence because it is payable only on the happening of a contingency that may not happen at all. The money which may or may not become the or the payment of which is dependent on the happening of an event which may not necessarily happen could not be called a "debt".

In the present case, as stated earlier, the tenants in their replies have stated that there are no arrears due against them payable to the judgment-debtor/applicant, and therefore, the prohibitory impugned order passed by the trial Court would relate to the future rent that may fall due against the tenants. The applicant would be entitled to receive and recover the rent only when it becomes due at the end of the month. The right to recover the rent is thus contingent only on the completion of the month. The right is thus contingent on the happening of this event and that until that event happens no debt would be due to him. The applicant has thus no present right to the rents payable to him in future. It cannot also be said as an accruing debt that is a "debt" no yet actually payable but a debt which is represented by an existing obligation. In the case of payment of monthly rent there is no existing obligation because the obligation to pay rent completes when the date for payment arrives at the end of the month. In the case of Shanti Prasad Jain Vs. The Director of Enforcement, it has been observed in paragraph 39 that a contingent debt is strictly speaking not a debt at all. As it has no present existence because it is payable only when the contingency happens, and ex hypothesi that may or may not happen. It has been further observed that the debt may be payable forthwith, solvendum in praesenti, then it is a debt "due" or it may be payable at a future date, solvendum futuro; then it is a debt "accruing". Relying on English decisions their Lordships took the view that an amount payable by a trustee to the beneficiary in future could not be attached by a judgment-debtor as debt "owing or accruing", as accruing debt, if a debt not yet actually payable to a debt which is represented by an existing obligation. On this consideration their Lordships took the

view that a contingent debt is no debt until the contingency happens.

There is a direct decision of the Division Bench of Rangoon High Court in the case of Maung Thein Zan & others v. S.A.S. Firm AIR 1925 Ran 318 in which it was held that an-existing debt can be attached, but there appears to be no provision of the Code under which a debt that has not yet fallen due can be attached. An attachment of rents which are only prospective is merely an attachment of a debt that has not accrued due, and therefore a prohibitory order under Rule 46 directing the tenants to deposit future rent in the Court cannot be sustained. There is yet another division bench ruling of the Allahabad High Court reported in the case of Lachman Vs. Jarbandhan, in which it was held that there can be no question that at the date of the attachment there was a certainty that the rent would become due. Relying on an English decision in the case of Webb v. Stenton 1883 (11) C.B.D. 518 it has been observed that a debt involves (a) an obligation incurred by the debtor, (b) a liability on the part of the debtor to pay for that obligation at a certain date and until the obligation had been fully incurred. There is no debt, It has been further observed that "Accrued" did not mean that the obligation was incomplete but merely that the date for payment had not arrived and the rent in respect of a period still in existence is thus not a debt at all as the obligation is not complete. On these reasonings it was held that the future rent was not attachable under Rule 46 of Order 21 of the Code. I find myself in respectful agreement to this view expressed in the two decisions referred to above. Consequently, the impugned order could not be sustained in law. In the result, the revision succeeds and is hereby allowed. The impugned order is set aside but without any order as to costs.