
(1926) 01 BOM CK 0045

Bombay High Court

Case No: O.C.J. Appeal No. 8 of 1926 and Suit No. 21 of 1925

Gajanan Ramkrishna
Mule

APPELLANT

Vs

Bhaskar Balvant
Kulkarni

RESPONDENT

Date of Decision: Jan. 25, 1926

Citation: (1926) 28 BOMLR 380 : 94 Ind. Cas. 116

Hon'ble Judges: Norman Macleod, J; Coyajee, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.

The plaintiff filed this suit to recover on a promissory note signed by the defendant on May 11, 1925. The promissory note recites an agreement previously arrived at on May 9, between two parties Bhaskar Balvant Kulkarni and the plaintiff. It would appear from the recitals in that agreement that the parties were transacting certain business in grocery at Nagar and Bombay, and the agreement was effected in order to settle the responsibilities between the parties. In consequence of that agreement the promissory note in suit was signed. An application was made to the Court by the plaintiff for an order against the defendant for attachment before judgment on the ground that the defendant was about to dispose of the whole or any part of his property with intent to obstruct or delay the execution of any decree that might be passed against him.

2. Whether as a matter of fact a defendant has brought himself within the provisions of Order XXXVIII, Rule 5, is always a difficult question for a Court to decide on affidavits. Considering the joint interest which the parties previously had, and the fact that the documents show that an arrangement was arrived at for the dissolution of those interests, it is difficult to say on the materials before us that the plaintiff has proved sufficient facts to enable this Court to make an order for attachment before judgment which has already been refused by the Chamber Judge.

3. It is not suggested that the defendant has any property within the local limits of the jurisdiction of this Court. It appears, however, that when an ex parte order was obtained by the plaintiff for attachment before judgment of the defendant's property, outside the local limits, the attachment was effected by a clerk in the plaintiff's attorney's office, who was appointed as a special bailiff for that purpose. That clerk had levied the attachment without even furnishing the usual returns to the Sheriff's office stating particulars of the attachment levied or the inventory of the goods attached. We are told that when an attachment before judgment is ordered of property outside the local limits of the jurisdiction of this Court, it has been the practice for the plaintiff to obtain an order in chambers appointing his solicitor's clerk a special bailiff for the purpose of levying attachment. We think that such a practice is entirely wrong and must be stopped. If the property of the defendant sought to be attached is outside the local limits of the jurisdiction of this Court, the proper course for the Court to follow is to transmit the order for attachment before judgment to the Court in whose jurisdiction the property is stated with a request that that Court should levy the attachment.

4. The appeal will be dismissed with costs.